RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1101053 SEPARATION DATE: 20090917

BOARD DATE: 20120724

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (13B/Cannon Crewmember), he was medically separated for patellofemoral syndrome with chronic bilateral knee pain. The CI developed bilateral knee pain in basic training in 2007, with diagnosis of patellar tendonitis in advanced individual training. He did not respond adequately to rest, oral medication or physical therapy treatments 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). Patellofemoral syndrome with chronic knee pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the patellofemoral syndrome with chronic knee pain condition as unfitting, rated 20% (10% each knee with bilateral factor applied), with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “I have been rated at 50% disability by the VA. I was given a 30% rating for asthma (and COPD), which was diagnosed when I was going through my separation exam from the Army. Mild asthma meets service retention, bur further testing showed I also had COPD as well as asthma, which the VA rated at 30%, still compensating me 10% for each knee.”

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 condition of asthma, as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting bilateral knee conditions. 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 (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090616** | | | | **VA (1 Wk. & 9 Mo. Post Separation) – All Effective Date 20090918** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| Patellofemoral Syndrome with Chronic Bilateral Knee Pain | 5099-5003 | L. | 10% | Left Knee, Retropatellar Pain Syndrome with Patellar Tendonitis | 5261-5003 | 10% | 20090924 |
| R. | 10% | Right Knee, Retropatellar Pain Syndrome with Patellar Tendonitis | 5261-5003 | 10% | 20090924 |
| Raynaud’s Phenomenon | Not Unfitting | | | Raynaud’s Phenomenon | 7199-7122 | 0% | 20090924 |
| Intermittent Cervical Pain | Not Unfitting | | | NSC |  |  | 20090924 |
| Intermittent Low Back Pain | Not Unfitting | | | NSC |  |  | 20090924 |
| Gastroesophagel Reflux Disease | Not Unfitting | | | Gastroesophageal Reflux Disease (GERD) | 7346 | 0% | 20090924 |
| Mild Intermittent Asthma | Not Unfitting | | | Asthma (claimed as COPD) | 6602 | NSC | 20090924 |
| 30%\* | 20100603 |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 5/Not Service-Connected x 8 | | | 20090924 |
| **Combined: 20%** | | | | **Combined: 50%\*** | | | |

\* Asthma, 6602 initial NSC determination changed to 30% per VARD dated 20100914, based on exam of 20100603.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the 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. However, the Department of Veterans’ Affairs (DVA), operating under a different set of laws, can rate and compensate all service-connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service-connected condition. The DVA can also increase or decrease ratings based on the changing severity of each condition 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, as well as the fairness of PEB fitness adjudications at the time of separation. The Board’s threshold for countering DES 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.

Patellofemoral Syndrome with Chronic Bilateral Knee Pain. There were two goniometric range-of-motion (ROM) evaluations in evidence for each knee, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Knee ROMs | MEB ~4 Mo. Pre-Sep | | VA C&P ~1 Wk. Post-Sep | |
| Left | Right | Left | Right |
| Flexion (140⁰ normal) | 145⁰ | 145⁰ | 145⁰ | 145⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | Drawer, Lachman & McMurray testing all negative; no effusion or laxity. Varus & valgus stress testing was negative | | No instability; McMurray & Lachman neg; crepitant patellar motion; painful motion … worse in right; normal gait | |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

At the MEB exam, the CI reported the bilateral knee pain unresponsive to treatments. The MEB physical exam noted bilateral patellar tenderness with full painless ROMs and no laxity or instability. Radiographs had indicated right patellar tendon thickening and historical magnetic resonance imaging (MRI) evidence of left knee effusion. At the VA Compensation and Pension (C&P) exam within a week of separation, the CI reported bilaterally painful knees with no history of swelling, locking or give way. He could walk one mile, but was unable to run or bike. He had pain with prolonged standing or walking more than a mile. On exam he had painful ROM to the VA normal ROMs, with bilateral tenderness and crepitance. There was “fluid worse in the left knee than the right knee.” There was no addition loss on repetitive motion.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA each rated the left and right knees at 10% each using the criteria of disability code 5003. There was no evidence of instability, locking or frequent effusions or any other pathology or functional loss for higher coding using any alternative code or dual coding of either knee.

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 patellofemoral syndrome with chronic bilateral knee pain condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was asthma (includes contended chronic obstructive pulmonary disease [COPD]). The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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. No respiratory condition was profiled or implicated in the commander’s statement. No respiratory condition was judged to fail retention standards. Asthma/COPD was reviewed by the action officer and considered by the Board. The CI indicated a history of intermittent shortness of breath during MEB processing and plmonary function tests showed normal baseline spirometry, with a positive methacholine challenge test that was consistent with a diagnosis of asthma. There was no indication of frequent treatment or medical visits for any respiratory condition. There was no indication from the record that any respiratory condition 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 the asthma, or any respiratory condition; and, therefore, 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. 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 patellofemoral syndrome with chronic bilateral knee pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended asthma (and/or COPD) condition, the Board unanimously recommends no change from the PEB determination as not unfitting. 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** |
| Patellofemoral Syndrome with Chronic Bilateral Knee Pain | Left | 5099-5003 | 10% |
| Right | 5099-5003 | 10% |
| **COMBINED (w/ BLF)** | | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111109, 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 XXXXXXXXXXXXXXXXXXXX, AR20120014305 (PD201101053)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA