RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1200018 SEPARATION DATE: 20081116

BOARD DATE: 20120731

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92A20/Automated Logistical Specialist), medically separated for a right knee condition and a mid back condition. He did not respond adequately to operative treatment for his right knee or conservative treatment for his back 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). Right knee pain and thoracic vertebral fractures 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 right knee condition and mid back condition as unfitting, rated 10% and 10% respectively, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made an appeal to the PEB that his eye condition was not considered. The PEB president upheld the decision PEB, and furthermore, after review of the medical documentation, did not consider the eye condition as unfitting. The U.S.Army Physical Disability Agency (USAPDA) upheld both the PEB and the President of the PEB’s decision and the CI was medically separated with a 20% disability rating.

CI CONTENTION: “I think my rating was unfair because I really didn't get an straight answer about my back and still in pain everyday. My knee is still in pain and had surgery done at FT. Wainwright and about 2 months later or maybe longer it got worst. I went back and the doctor just pretty much told me the VA would take care of it when I got out. I haven't been able to sleep in my bed for a whole night in like the past 5 years I have to sleep on the floor. I am so tired of going thru this pain everyday. I also complained about my left knee and I was told that the VA would take care of it.”

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 right knee pain and thoracic vertebral fracture conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below. The left knee is not within the Board’s purview. 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 20080718** | | | **VA (~2 Mos. Post-Separation) – All Effective Date 20081117** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Right Knee Pain | 5099-5003 | 10% | S/P Right Knee Arthroscopic Surgery | 5024 | 10% | 20090107 |
| Thoracic Vertebral Fractures | 5235 | 10% | Lower Back Strain | 5237 | 10% | 20090107 |
| Hypercholesterolemia | Not Unfitting | | No Corresponding VA Entry | | | 20090107 |
| Genital Herpes | Not Unfitting | | Herpes Simplex Viral Infection | 7899-7806 | 0% | 20090107 |
| ↓No Additional MEB/PEB Entries↓ | | | GERD | 7399-7346 | 10% | 20090107 |
| 0% X 4 (Includes Above) / Not Service-Connected x 2 | | | |
| **Combined: 20%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the back rating was unfair due to a lack of answer for his pain and the worsened knee pain despite his surgery. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service-improprieties in the disposition of a case. 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. 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. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Right Knee Pain Condition. The CI had a long history of atraumatic anterior knee pain which was evaluated while he was stationed at the warrior transition unit for his back pain. Imaging revealed a meniscus tear which led to arthroscopic repair in February 2008 by Orthopedics. At the time of surgery it was noted there was a very large area of spongy cartilage on the articular surface of the patella which was not repaired and a small defect noted in the superior lateral facet which was repaired, in addition to the medial meniscus repair. Post-operative course was uneventful and the CI continued to have persistent knee pain which precluded his ability to run.

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

|  |  |  |  |
| --- | --- | --- | --- |
| Right Knee ROM | MEB ~5 Mos. Pre-Sep | PT ~5 Mos. Pre-Sep | VA C&P ~2 Mos. Post-Sep |
| Flexion (140⁰ Normal) | 110⁰ | 100⁰ | 140⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ |
| Comment | Painful motion | Painful motion | Painful motion |
| §4.71a Rating | 10%\* | 10%\* | 0% |

\*Conceding §4.59 painful motion

At the MEB exam, the CI reported continued knee pain and the daily use of an anti-inflammatory medication, Mobic, and Percocet, a narcotic based medication, as needed, using less than 30 per month. The MEB physical exam documented two ROMs. The right knee was 0-110 degrees with pain and no evidence of instability or effusion. The left knee was 0-120 degrees with no pain or instability. At the VA Compensation and Pension (C&P) exam performed after separation, the CI reported constant pain and stiffness in the right knee without radiation which was sharp with in character with a severity level of 8 out of 10, exacerbated with physical activity and relieved with Mobic. The C&P physical exam documented negative provocative ligament or menisci findings, and was absent painful motion and DeLuca observations.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA applied different VASRD codes but were subject to the same rating criteria IAW 4.71a—schedule of ratings–musculoskeletal system. The PEB chose code 5003 (arthritis, degenerative), which specifies that degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved. When however “the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” The Board agreed there was noncompensable ROM impairment of the right knee, and met the criteria of the 10% minimum IAW code 5003. The Board considered the VA choice of coding the right knee under 5024, tenosynovitis, and agreed this code does not correctly describe the underlying clinical pathology. The Board considered code 5259 (cartilage, semilunar, removal of, symptomatic) or code 5014 (chondromalacia patella analogizes to 5014) which defaults to the 5003 code, both of which represent the underlying pathology, and both yield a minimal compensable 10% rating with application of §4.59 (painful motion). The Board agreed there was no evidence of incapacitating episodes to support additional or a 20% rating under the 5003 code. Finally, the Board considered code 5258 (cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint); however, there were no symptoms of the right knee giving way or findings of effusions. There was no VASRD compliant coding or rating approach that would yield additional or higher than a minimal compensable 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 right knee condition and since the choice of VASRD code conferred no rating advantage, and no code was clinically predominant, no change from the PEB designation is recommended.

Thoracic Vertebral Fractures Condition. In 2001 the CI strained his back while moving pallets in a warehouse then 2 months later fell from a 5-ton truck, while performing field exercises, in full battle gear landing on his back. He sought care for back pain, worse at night initially, and then repetitively sought care for persistent back pain especially with sit-ups, running and lifting more than 30lbs. He received medications, physical therapy visits and temporary profiles which provided some relief. A 2007 magnetic resonance imaging (MRI) of his lumbar spine revealed minimal degenerative disc disease (DDD) without cord involvement. The orthopedic provider diagnosed DDD and opined the CI was able to complete the walk portion of his APFT but gave the CI a P2 profile to do no sit-ups. If the CI was not able to complete all functional activities listed in block 5 of the DA Form 3349, physical profile, then he would recommend a MEB. Plain X-rays of the thoracic spine performed a month later, revealed compression deformities of the T-9 and T-12 vertebrae. The CI was moved to the WTU and underwent a MEB.

There were three goniometric 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 | PT ~5 Mos. Pre-Sep | MEB ~5 Mos. Pre-Sep | VA C&P ~2 Mos. Post-Sep |
| Flexion (90⁰ Normal) | 90⁰ | 90⁰ | 90⁰ |
| Combined (240⁰) | 230⁰ | 210⁰ | 240⁰ |
| Comment | Tenderness; spasms, painful motion, no abnormal gait, some loss of lumbar lordosis | Tenderness; painful motion, | Painful motion, normal gait and posture, |
| §4.71a Rating | 10%\* | 10%\* | 10%\* |

\*Conceding §4.59 painful motion

At the MEB exam, the CI reported progressive back pain since his injuries in 2001. The MEB physical exam demonstrated no evidence of spasm or guarding, and Waddell signs were 0 of 7. X-rays revealed 13 degree curvature of the thoracic spine from T3-T6 with a compensatory 9 degree curvature from T6-T10 and a 33% compression deformity of the T9 and 15% of T12. MRI revealed annular bulging at L4/5 with right neuroforaminal narrowing, and also bilateral neuroforaminal narrowing at L5/S1. At the C&P exam, the CI reported constant back pain without radiation with a severity level of 9 of 10 exacerbated with physical activity and relieved with rest or a heating pad. He denied taking medication for this condition. The C&P exam documented pain with movement, but no muscle spasm, tenderness, ankylosis or deformity. Straight leg raising was normal, and there were no DeLuca observations. X-rays were negative.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, compliant with VASRD §4.46 (accurate measurement) and similar in terms of ratable data and therefore the Board assigns both exams equal probative value. The PEB and VA chose different coding options for the low back condition but this did not bear on rating and both assigned IAW VASRD §4.71a, the general rating formula for diseases and injuries of the spine. The PEB chose code 5235 (vertebral fracture or dislocation), which was appropriate for the underlying clinical pathology, and rated on slight change in curvature with evidence of pain limited motion consistent with §4.71a. The VA chose code 5237 (lumbosacral or cervical strain) based on pain limited flexion. The Board noted however the ROMs for the VA L-Spine exam were not compensable and surmised the VA likely invoked §4.59, painful motion, to warrant the 10% rating, although this was not clear. While the service x-rays reflected a slight change in curvature, there was no documentation by either examiner of abnormal gait, spasm or guarding resulting in an abnormal spinal contour which would meet the 20% rating criteria independently of the ROM measurements. The Board noted the vertebral body fractures were less than 50% of the height which therefore did not meet the 10% rating criteria. Neither the PEB nor the VA had evidence of functional loss due to pain or flare-ups. There was also no evidence of ratable peripheral nerve impairment in this case. 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 low back 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 right knee condition and the back condition 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** |
| Right Knee Pain | 5099-5003 | 10% |
| Thoracic Vertebral Fractures | 5235 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111120, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

