RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200023 SEPARATION DATE: 20070228

BOARD DATE: 20121016

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (92F, Petroleum Supply Specialist) medically separated for a left knee condition. She injured the knee early in training in 1999, and suffered an additional injury later in service. She was diagnosed with meniscal damage, and underwent sequential arthroscopic surgical interventions. The joint, however, could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The right knee condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions (as identified in the rating chart below) were addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the right knee condition as unfitting, rated 0%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “It is the condition that stripped the desired life long career and continues to cause chronic pain along with failures to receive gainful employment in civilian sector. Condition will not get better.” She 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 right knee condition is addressed below; but, since they were not requested for review, the remaining conditions determined to be not unfitting by the PEB are not within the DoDI 6040.44 defined purview of the Board. Those, and any other conditions or contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20070103** | **VA (2 Mos. Post-Separation) –Effective 20070301** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Left Knee Pain | 5099-5003 | 0% | Residuals, Left Knee | 5260 | 10% | 20070508 |
| Carpal Tunnel Right Wrist | Not Unfitting | Tendonitus, Right Wrist/Hand | 5215 | 10% | 20070508 |
| Goiter | Not Unfitting | Thyroid Condition | 7999-7900 | NSC | 20070508 |
| Hyperlipidemia | Not Unfitting | Not Ratable | 20070508 |
| Periodontal Disease | Not Unfitting | No VA Entry | 20070508 |
| No Additional MEB/PEB Entries | 0% X 1 / Not Service Connected (NSC) x 5 Additional | 20070508 |
| **Combined: 0%** | **Combined: 20%** |

ANALYSIS SUMMARY: IAW DoDI 6040.44, the Board’s authority is limited to making recommendations on correcting disability determinations. The Board’s role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veteran’s Administration Schedule for Rating Disabilities (VASRD) standards, based on ratable severity at the time of separation. The Board acknowledges the CI’s information regarding the significant impairment with which her service-connected condition continues to burden her; but, must emphasize that the Disability Evaluation System (DES) has neither the role nor the authority to compensate 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. Post-separation evidence is probative to the Board’s recommendations only to the extent that it reasonably reflects the disability at the time of separation.

Left Knee Condition. The CI initially injured her knee during advanced individual training in 1999, and subsequently underwent surgical intervention with improvement. She re-injured the knee during a 2000 deployment to Bosnia and underwent a second arthroscopic meniscal debridement after redeployment. Although her symptoms continued to worsen, she deployed to Afghanistan in 2004 and the condition was significantly aggravated. She underwent a third arthroscopic intervention, but ultimately a MEB referral was mandated. Final imaging revealed “stable postoperative changes” and “findings consistent with prior meniscal debridement,” with normal ligamental structures and no detached meniscus. The narrative summary (NARSUM) is excerpted below:

Pain is described as sharp pain, electric-like, sometimes radiating from hip to knee to foot. Pain is 10/10 at worse to 6/10 at best, lasting all day. The soldier reports subjective weakness, stiffness, swelling, and warmth. She reports some instability and giving way with stairs he knee buckles, no falls. She reports 2 knee lock-ups per month. Some fatigability and lack of endurance, which feels like her leg drags after walking and stairs. ... Pain is precipitated by stairs, inclines, walking more than one mile, any running, lifting more than 10 lbs, standing more than 15 minutes, and sitting more than 30 minutes.

The physical exam noted a normal gait, intact ligamental stability, the absence of effusion, and no signs of cartilage impingement. Knee flexion was 125 degrees (normal 140 degree, minimal compensable 45 degrees) and “limited by pain”; extension was normal (0 degrees). The VA Compensation and Pension (C&P) exam stated, “At the present time she complains of daily pain in the left knee with an associated locking sensation. The knee is unstable and she will fall on occasion. It swells periodically.” The C&P exam noted normal gait, “a moderate degree of bony swelling” without effusion, and a stable joint without signs of meniscal impingement. The VA examiner documented flexion of 110 degrees and normal extension; but stated, “Range of motion appeared to be pain free and not additionally limited following repetitive use on this examination.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 0% rating analogous to 5003 (degenerative arthritis) rested on application of the USAPDA pain policy which circumvents VASRD §4.59 (painful motion); and, the MEB examiner documented pain-limited motion. The VA’s 10% rating under 5260 (limitation of flexion) cited the criterion of §4.59 to achieve the minimum compensable rating, even though the C&P examiner documented painless motion. Although members agreed that application of either §4.59 (per the NARSUM) or §4.40 (functional loss) was supported to achieve the minimum compensable rating under any choice of code; application of code 5259 (cartilage, semilunar, removal of, symptomatic), which is quite specific for this case, would yield a 10% rating independently of §4.59 or §4.40. There is no support for a separate rating based on instability, given the exam and imaging findings. Deliberations then turned to applicability of an analogous rating under code 5258 (cartilage, semilunar, dislocated, with frequent episodes of “locking,” pain, and effusion into the joint); which would yield a 20% rating (the highest achievable IAW VASRD §4.71a based on the evidence). Although subjective locking and instability of the knee was documented by both the MEB and VA examiners, the imaging and exam findings make it clear (more likely than not) that there was no true mechanical locking based on meniscal impingement or frequent effusions. Members thus agreed that application of code 5258 was not supported. 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 under code 5259.

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. As discussed above, PEB reliance on the USAPDA pain policy for rating the left knee condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the left knee condition, the Board unanimously recommends a disability rating of 10%, coded 5259, IAW VASRD §4.71a. 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 her prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Meniscal Injury and Surgical Residuals, Left Knee | 5259 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111230, 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 XXXXXXXXXXXXXXXXXX, AR20120019886 (PD201200023)

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 rating to 10% 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 XXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA