RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200029 SEPARATION DATE: 20080118

BOARD DATE: 20121031

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92Y10, Armorer), medically separated for chronic right hip and right knee pain status post closed femoral reduction of a diaphyseal fracture and intramedullary fixation. In August 2006, the CI sustained an injury to his right femur playing soccer while deployed to Iraq. He was air-evacuated to Landstuhl, where surgery was performed. He was subsequently air-evacuated to his home station for his post-operative recovery and rehabilitation. He continued to have slight but frequent right knee and right hip pain. 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). Right knee pain and right hip pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as a medically acceptable condition. The PEB adjudicated the right hip and right knee pain status post closed femoral reduction of a diaphyseal fracture and intramedullary fixation as a single unfitting condition, rated 10%, with cited application of the US Army Physical Disability Agency (USAPDA) pain policy and the Veteran’s Administration Schedule for Rating Disabilities (VASRD), respectively. Additionally the nerve palsy median condition was determined to meet retention standards and be not unfitting. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I fractured my right femur in August 2006. I have permanent (sic) damage to my right leg. I sometimes use a cane to walk.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. All of the conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below. 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20071025** | | | **VA (1 Mo. After Separation) – All Effective Date 20080118** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Rt Hip & Rt Knee Pain S/P Femoral . . . . . . | 5099-5003 | 10% | S/P Repaired FX’d Rt Femur | 5252-5255 | 10% | 20080213 |
| Rt Knee Pain | 5257-5260 | NSC | 20080213 |
| Nerve Palsy Median | Not Unfitting | | RUE Nerve Palsy Median CTS | 8599-8515 | NSC | 20080213 |
| LUE Nerve Palsy Median CTS | 8599-8515 | NSC | 20080213 |
| ↓No Additional MEB/PEB Entries↓ | | | Lt Shoulder Rotator Cuff Sprain | 5019-5201 | 10% | 20080213 |
| 0% x 2/Not Service Connected x 3 (\*includes above) | | | 20080213 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY:

Right Hip and Knee Pain Condition Status Post (s/p) Closed Femoral Fracture and Intramedullary Fixation (ORIF). As the CI’s injury was to his right femur, both the hip and ankle are considered together. The CI underwent an open reduction internal fixation (ORIF) performed in August 2006, 17 months prior to separation. The left hip/knee were not impacted and exams for the uninjured left side are included for comparison only. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Goniometric ROM – Hips | PT ~ 10 Mo. Pre-Sep | Ortho ~ 8 Mo. Pre-Sep | MEB ~ 3.5 Mo. Pre-Sep | | VA C&P ~ 1 Mo. After-Sep | |
|  | Right | Right | Left | Right | Left |
| Flexion (0-125) | “FAROM bilat LE” | Reduced adduction, external rotation, and internal rotation with the hip flexed | 120⁰ | 125⁰ | 125⁰ | 125⁰ |
| Extension (10-20) | 0⁰ | 0⁰ | 20⁰ | 30⁰ |
| Abduction (0-45) | 45⁰ | 45 | 45⁰ | 45⁰ |
| Adduction (0-45) | Not Measured | - | 15⁰ | 25⁰ |
| Comment | R hip motor 4/5 and painful; Pos FABER; TTP R SI joint; Susp SIJ dysfc SIJ not examined--pt will return | Piriformus test positive; no weakness; “no tenderness was observed with ambulation” | (Right) “Hip pain is elicited by active flexion of the hip and active flexion of the knee. Pain is noted at the extremes of flexion and extension.” “Decreased ROM most likely due to scar and caspsular contraction” | | Gait normal; tender; painful motion | normal |
| §4.71a Rating |  | 10% (see text) | 10% (see text) | - | 10% (see text) | - |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Goniometric ROM  Knees– | PT ~ 10 Mo. Pre-Sep | Ortho ~ 8 Mo. Pre-Sep | MEB ~ 3.5 Mo. Pre-Sep | | VA C&P ~ 1 Mo. After-Sep | |
|  | Right | Right | Left | Right | Left |
| Flexion (140⁰ normal) | “FAROM bilat LE” | AROM was normal | (115⁰) 120/125/115 | 140⁰ | 140⁰ | 140⁰ |
| Extension (0⁰ normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment |  | no tenderness on ambulation | See hip comments above; neg Lachman’s | | Gait normal; normal | |
| §4.71a Rating |  | 0% | 10% (see text) | - | 0% (see text) | - |

The narrative summary (NARSUM) notes complaints of right hip and knee. The MEB physical exam noted well healed incisions with pain-limited right hip ROM as summarized above. Hip pain was also noted on knee ROM testing. Radiographs of the right femur indicated hardware in place and good bone formation. At the VA Compensation and Pension (C&P) exam performed a month after separation, the CI reported right hip and knee pain. There was pain with physical activity and no ongoing treatment for either the hip or knee. Exam demonstrated a tender hip with painful motion with normal knee exams; the exams are summarized above. Radiographs showed an intermedularry rod in the right femur with a well-healed old fracture of the mid shaft of the bone without acute abnormalities. Right hip and knee radiographs were negative.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated both the right hip and knee pain at 10% coding 5099-5003 analogous to 5003 (arthritis) citing the USAPDA pain policy. The VA rated the right leg disability at 10% coding as 5252-5255 (Thigh, limitation of flexion; with the criteria of femur impairment) and the 10% criteria are "With slight knee or hip disability." The VA exam indicated improved knee and hip ROMs from those documented 4.5 months earlier at the MEB exam, and the VA indicated there was no right knee pathology or diagnosis. The Board deliberated over which exam had the highest probative value and noted the service treatment record (STR) indicated slow improved symptoms and ROMs over the year prior to separation, and that the VA exam was closer to the date of separation and more detailed. The VA exam was the highest probative value exam for rating. The Board next considered if the exams and record indicated either moderate (20%) or slight (10%) impairment under coding of 5252-5255, or 10% coding under 5099-5003. There was insufficient evidence to additionally rate the 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’s 10% adjudication for the right hip and knee pain condition s/p femur ORIF 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. As discussed above, PEB reliance on the USAPDA pain policy for rating chronic right hip and right knee pain s/p ORIF was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic right hip and right knee pain s/p femoral ORIF 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Rt Hip & Rt Knee Pain S/P Femoral | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120106, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120020004 (PD201200029)

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA