RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200045 SEPARATION DATE: 20040214

BOARD DATE: 20121010

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PVT/E-1 (63W/Light Wheel Vehicle Repairer), medically separated for left knee pain. The CI had several injuries to his left knee. Despite a left knee arthroscopy, medications and physical therapy (PT), the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded left knee pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication, but stated that the CI “seems to have a component of arthrofibrosis and a questionable diagnosis of mild RSD” [*reflex sympathetic dystrophy; also called complex regional pain syndrome (CRPS)*]. The PEB adjudicated the left knee pain condition as unfitting, rated 10%, with likely application of the US Army Physical Disability Agency (USAPDA) pain policy and the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

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CI CONTENTION: “I feel that my case should be considered for re-evaluation because of the false pretense I was enformed (*sic*) of during my separation from the military. On the time of my separation I was informed that I would be medical retired from the military because of the substantive injuries I occurred during my tenure. Upon leaving I was instructed to contact my local VA office and have them re-evaluate and assess my discharge. Upon my discharge since 2005 and to present I have been in contact with my local VA establishment and repeatedly been set aside for re-determination of existing problems. I am enclosing all documentation needed and I was just recently evaluated once again in 2010 but no other determination has been given since. I thank you once again for the help and I look forward to hearing from your establishment in the near future.”

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. The unfitting condition left knee pain meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The other requested conditions are not within the Board’s purview. Any condition 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 20040112** | | | **VA (18 Mo. After Separation) – All Effective Date 20050228** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Knee Pain | 5099-5003 | 10% | Chondromalacia Patella S/P Left Knee Arthroscopy and Ossicle Excision | 5014 | 10% | 20050819 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service Connected x 12 | | | 20050819 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment and worsening severity with which his service-incurred condition continues to burden him. It is a fact, however, 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. 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 utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. With regard to the CI’s assertion that there were improprieties in his disability counseling or processing, the Board must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected improprieties in the disposition of a case.

Left Knee Pain Condition. There were two 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.

|  |  |  |
| --- | --- | --- |
| Left Knee ROM | MEB ~2 Mo. Pre-Sep | VA C&P ~18 Mo. Post-Sep |
| Flexion (140⁰ Normal) | 60⁰-70⁰ | 150⁰ |
| Extension (0⁰ Normal) | -5⁰ “symmetric with right” | 0⁰ |
| Comment:  knee x-ray normal | Tenderness to palpation (TTP); significant muscle spasm/pain in anterior portion with any flexion past that point (60⁰-70⁰); stable ligaments | TTP; palpable/audible crepitus anterior aspect left knee; no laxity; calf measures Left 49 cm / right 57 cm |
| §4.71a Rating | 10% | 10% |

The CI has a well documented history of left knee pain in the service treatment record (STR) from May 1999 through September 2002. The CI was initially diagnosed with Osgood –Schlatter’s disease in May 1999 due to a left knee patellar deformity. He continued with sharp pains to the anterior knee during running and was evaluated by Orthopedics. In March 2001 a diagnostic left knee arthroscopy with ossicle excision was done. There was no ligamentous or meniscal injury seen; however significant chondromalacia to the lateral aspect of the patella was visualized. The CI continued to run with some pain for a short period of time; however he reinjured the left knee by jumping from a vehicle and landing on his left knee cap. The CI sustained a second left knee injury when his knee became trapped between an engine and a forklift. He went through PT for left knee strengthening exercises. In December 2002 the CI was placed on permanent P4 Profile for left knee patellofemoral pain syndrome, status post patellar tendon ossicle excision with restrictions of no jumping, running or marching. The MEB examination performed 2 months prior to separation indicated occasional left knee locking in a straight position, swelling with increased activity and the need for narcotic and non narcotic pain medication. The functional impairment was less mobility, flexion and strength. The examiner opined that the prognosis was poor to allow functioning in the CI’s MOS. The exam is summarized above.

The VA Compensation & Pension (C&P) examination, performed 18 months after separation documented increased pain in cold weather, discomfort associated with walking and going downstairs. The functional impairment was weakness and less mobility with repetitive motion activities. The exam is summarized above and indicated significant left calf muscle atrophy.

The Board directs attention to its rating recommendation based on the above evidence. The PEB unfitting determination for the left knee pain was coded analogously to arthritis (5099-5003) at 10%. The VA rated the chondromalacia patella S/P left knee arthroscopy and ossicle excision as 5014 (Osteomalachia) at 10%. The left knee was tender and demonstrated painful motion on the preponderance of exams, including pain-limited motion at the MEB exam. No exam indicated limited ROM to a compensable level for 5260 (limitation of flexion) or 5261 (limitation of extension) to a 10% or higher rating criteria level (45 degree flexion, or lacking 10 degree of extension).

The PEB possibly applied the USAPDA pain policy in its determination of the 10% rating. However use of this policy did not materially affect the rating in this case and a 10% rating is obtained when utilizing the VASRD alone for any of the ratable exams proximate to separation. VASRD §4.71a specifies for 5003 that “satisfactory evidence of painful motion” constitutes limitation of motion and specifies application of a 10% rating “for each such major joint or group of minor joints affected by limitation of motion” and VASRD §4.59 (painful motion) provided an alternate justification for a 10% rating. The left knee condition could not be reasonably rated higher than 10% using any exam proximate to separation or any alternate rating schema. All evidence considered there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s coding or rating decision for the left knee pain 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 the left knee pain condition was possibly operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left knee pain 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** |
| Left Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120109, 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 / XXXXXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20120019889 (PD201200045)

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 XXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA