RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200081 SEPARATION DATE: 20080812

BOARD DATE: 20121024

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (42A10/Human Resources Specialist), medically separated for bilateral, right greater than left, knee chondromalacia patella. The CI was diagnosed with systemic lupus erythematosus (SLE; an auto-immune disease) with arthritis in both knees in 2001. She was well controlled on medication until knee ankle and wrist joints symptoms worsened in 2007. Her bilateral knee condition did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) satisfy physical fitness standards. She was issued a permanent P2/U2/L3 profile and referred for a Medical Evaluation Board (MEB). Systemic lupus condition, identified in the rating chart below, was also identified and forwarded by the MEB as medically acceptable. The Physical Evaluation Board (PEB) adjudicated the bilateral knee condition as unfitting, rated 10% for each knee with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining condition was determined not to be unfitting. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “The rating for the condition which rendered the member unfit should be changed b/c when SM was separated the Army only awarded her 20% then about three months later VA awarded SM 40%, so the SM should have been medically retired b/c 30% is automatic medical retirement.”

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 systemic lupus condition (part of the VA 40% rating) requested for consideration and the unfitting bilateral knee conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested condition [osteopenia of both hips; part of the VA 40% rating] 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 Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20080612** | | | | **VA (At Separation) – All Effective Date 20080813** | | | |
| **Condition** | **Code** | | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Chondromalacia Patella | 5099-5003 | Left | 10% | Lt Patellar Chondromalacia | 5260-5014 | 10% | 20080814 |
| Right | 10% | Rt Patellar Chondromalacia | 5260-5014 | 10% | 20080814 |
| Systemic Lupus | Medically Acceptable | | | Systemic Lupus Erythematosus | 6350 | 10% | 20080805 |
| ↓No Additional MEB/PEB Entries↓ | | | | Osteopenia, Both Hips | 5013 | 10% | 20080814 |
| 0% x 4/Not Service Connected x 2 | | | 20080805 |
| **Combined: 20%** | | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY:

Bilateral Knee Condition. There were two 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.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Knee ROM | MEB ~4 Mo. Pre-Sep | | VA C&P ~At Sep | |
| Left | Right | Left | Right |
| Flexion (140⁰ Normal) | 130⁰ | 125⁰ | 135⁰ | 135⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | Minimal synovitis; grating on flex/ext; no instability | | Tender; no crepitus, instability, or change on repetition | |
| §4.71a Rating | 10% | 10% | 10% | 10% |

At the MEB exam, the CI reported worsened pain in both of her knees with episodic swelling. The NARSUM, orthopedic and rheumatology exams of the knees demonstrated grating or crepitus on ROM evaluation and formal ROM testing is summarized above. Knee radiographs found no significant abnormalities. Assessment was “chondromalacia patella, bilateral knees UP paragraph 3-14e Pain both knees consistent with knee joint involvement of systemic lupus erythematosus, medically acceptable.” At the VA Compensation and Pension (C&P) exam a few days after separation, the CI reported similar knee symptoms and limitations. The exam is summarized above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated each knee at 10% as 5099-5003 and the VA rated each knee at 10% as 5260-5014 (limited leg flexion-osteomalacia). Both use the criteria of VASRD 5003 and application of §4.59 (painful motion) and/or §4.40 functional loss), and neither coding scheme is predominate. All exams met the 10% criteria for painful or pain-limited ROM for each 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 adjudications of 10% for the right knee and 10% for the left knee conditions.

Contended PEB Condition. The contended condition adjudicated as not unfitting by the PEB was systemic lupus (SLE). 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. SLE was profiled as P2 on the final profile which had been changed from a prior P3 profile. The MEB judged SLE meet retention standards. The commander’s statement specified SLE interfered with duty performance. The CI had long-standing SLE “on medication with reasonable control” from 2001 to 2007. SLE symptom worsening was predominately increased joint pain (chronic arthritis) with the NARSUM indicating “Pain both knees consistent with knee joint involvement of systemic lupus erythematosus.” The CI had been on oral systemic steroids for 8 years (Prednisone 15 mg/day), and was also taking Plaquenil and Relafen (anti-arthritic medications). The narrative summary (NARSUM) and treatment records specified that joint pain was due to SLE and that the symptoms of the bilateral knee joints were unfitting.

The CI denied significant flares of her SLE, aside from the multiple joint pain worsening in 2007 in the NARSUM (flares were “approximately once a year” in the VA exam history). The Board directs attention to its fit/unfit recommendation based on the above evidence. The preponderance of the evidence indicated that worsening of the CI’s SLE condition was responsible for her knee pain condition. The Board adjudged that the worsening of the SLE condition that increased the joint pain conditions to unfitting, also clearly indicated that the SLE should be adjudged unfitting. With regard to rating the SLE condition, exacerbations were at most once a year and multiple joint pains and other manifestations of SLE met the 10% rating criteria of “symptomatic during the past two years” for code 6350 (Lupus erythematosus, systemic [disseminated]). After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of SLE favors its recommendation as an additionally unfitting condition for disability rating. It is appropriately coded 6350 and meets the VASRD §4.88b criteria for a 10% rating.

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 left and right knee conditions and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudications. In the matter of the contended systemic lupus erythematosus (SLE) condition, the Board unanimously agrees that it was unfitting; and, unanimously recommends a disability rating of 10%, coded 6350 IAW VASRD §4.88b. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **UNFITTING CONDITION** | | | **VASRD CODE** | **RATING** |
| Bilateral, Right Greater than Left, Knee Chondromalacia Patella | Left | | 5099-5003 | 10% |
| Right | | 5099-5003 | 10% |
| Systemic Lupus Erythematosus | | | 6350 | 10% |
| **COMBINED (w/ BLF)** | | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120124, 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, AR20120020008 (PD201200081)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA