RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1200086 SEPARATION DATE: 20080425

BOARD DATE: 20120523

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-5 (1W0/Weather Technician), medically separated for bilateral chondromalacia patella, patellofemoral Syndrome. He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. He was issued a permanent S4 profile and underwent a Medical Evaluation Board (MEB). Bilateral chondromalacia patella, patellofemoral syndrome, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable AFI 48-123. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the bilateral chondromalacia patella, patellofemoral syndrome condition as unfitting, rated 10%. The CI appealed to the Formal PEB (FPEB) contending for the addition of obstructive sleep apnea (OSA) as an unfitting condition for separate rating. The FPEB affirmed the rating for the knee condition and determined the OSA condition was not unfitting. The CI appealed to the Secretary of the Air Force Personnel Council (SAFPC), which affirmed the FPEB findings; and was then medically separated with a 10% disability rating.

CI CONTENTION: “It is my belief that all of my physical and mental conditions were not taken into account at the time of my PEB. There was a dissenting opinion between formal board members. Although the medcal board member rated my conditions at a significantly higher percentage, I was only given a compensable percentage of ten. After review of the VA determination, I believe there exists a significant disparity in rating.” The CI lists all of his VA rated conditions.

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 service ratings for unfitting conditions will be reviewed in all cases. The OSA condition requested for consideration and the unfitting bilateral chondromalacia patella with patellofemoral syndrome condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions, anxiety, migraine headache, lumbar condition, foot condition, postoperative deviated nasal septum, and acne rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DA Form 294 application are 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 Air Force Board for the Correction of Military Records (AFBCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20080131** | **VA (1 Mo. After Separation) – All Effective Date 20080426** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Chondromalacia Patella, Patellafemoral Syndrome | 5099-5003 | 10% | Chondromalacia/Patellofemoral Syndrome, R Knee | 5260 | 10% | 20080303 |
| Chondromalacia/Patellofemoral Syndrome, L Knee | 5260 | 10% | 20080303 |
| Obstructive Sleep Apnea | Cat II  | Sleep Apnea | 6847 | 50% | 20080303 |
| ↓No Additional MEB/PEB Entries↓ | Anxiety | 9400 | 30% | 20080303 |
| Migraine Headache | 8100 | 10% | 20080310 |
| 0% x 4/Not Service-Connected x 7 | 20080303 |
| **Combined: 10%** | **Combined: 80%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. 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 nor for conditions determined to be service-connected by the DVA but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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’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.

Bilateral Chondromalacia Patella, Patellofemoral Syndrome 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 | PT ~4 Mo. Pre-Sep(20080102) | VA C&P ~6 Mo. Post-Sep(20081015) |
| Left | Right | Left | Right |
| Flexion (140⁰ Normal) | 115⁰ | 100⁰ | 140⁰ | 140⁰ |
| Extension (0⁰ Normal) | 0⁰ | 0⁰ | 0⁰ | 0⁰ |
| Comment | Pain with squatting.No instability.Normal patellar mobility. | Pain with squatting.No instability.Normal patellar mobility. | Normal Gait.Squat without pain.No instability. | Normal Gait.Squat without pain.No instability. |
| §4.71a Rating\* | 10% | 10% | 10% | 10% |

 \*Non-compensable ROM but 10% with application of §4.59 / §4.40.

According to an orthopedic evaluation dated 30 March 2007, the CI had “long standing insidious knee pain with activity,” right greater than left. There was no history of injury, and examination was consistent with patellofemoral pain syndrome and chondromalacia patella. ROM was recorded as full in both knees and there was no instability. Patellar mobility was normal without abnormal positioning (“tilt”). An MRI performed on 26 March 2007 demonstrated a small effusion but no cartilage damage. Treatment with medication, physical therapy and visco-supplementation injections did not sufficiently improve his symptoms of pain with activity. The MEB narrative summary (NARSUM), dated 21 June 2007, documented full ROM of both knees, normal patellar mobility, and no instability or meniscus signs. Physical therapy goniometric ROM is recorded in the chart above. At the time of the VA Compensation and Pension (C&P) examination on 15 October 2008, 6 months after separation, the gait was normal, and the CI could perform squatting without pain. The ROM was normal and there was no instability. X-rays were normal. The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and rated 10%. The Board notes that although “bundling,” the combining of conditions under a single code, is permissible under the VASRD 5003 rating requirements, the approach does take into account the VASRD §4.7 directive to choose the higher of two valid ratings. The Board therefore will apply separate codes and ratings for each joint in its recommendation, since compensable ratings for each knee condition are achieved IAW VASRD §4.71a. This is consistent as well with the VA rating decision. The VA rated the patellofemoral syndrome of each knee separately, coded analogously to limitation of flexion, but applied §4.59 to yield a compensable rating. ROM measurements on both the MEB and VA exams were in the 0% compensable range for each knee, although evidence supporting the minimum compensable ratings IAW §4.59 (as cited in the chart) can be drawn from the records. There is no viable approach to a higher rating for either knee separately. All evidence considered, the Board recommends that each knee be separately adjudicated as unfitting, coded 5299-5260 and rated 10% each IAW VASRD §4.71a.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was obstructive sleep apnea. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. 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. The CI presented to the clinic in August 2007 complaining of problems sleeping. Evaluation in the sleep clinic in September documented symptoms of excess daytime drowsiness and snoring. Testing in the sleep lab diagnosed moderate OSA successfully controlled with application of continuous positive airway pressure (CPAP) via a nasal device. At the time of a follow up appointment on 9 November 2007, the examiner recorded: “Pt says he had no problem sleeping with nasal CPAP device and the day after the study was the first time in a long time that he did not feel the need for a nap in the afternoon.” A nasal CPAP device was on order for the CI. Enlisted performance reports from November 2001 through August 2007 documented excellent duty performance. The commander’s letter dated 14 October 2007 documented excellent duty performance with no mention of impairment due to fatigue or excess sleepiness. Coworker letters 14 January 2008 and 22 January 2008 make no mention of problems with daytime fatigue or sleepiness, and the letter dated 22 January 2008 notes “in fact, I would say he is the unit’s most skilled and reliable forecaster.” The services do not routinely find OSA, with or without CPAP requirement, unfitting if symptoms are controlled and functioning is unimpaired. The burden of providing CPAP in field and deployment environments is not considered to be a critical factor with the common availability of portable generators and sanitary facilities. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory performance of duties. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA 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. In the matter of the right and left knee condition (patellofemoral syndrome), the Board unanimously recommends a separate disability rating of 10% for each knee, coded 5299-5260 IAW VASRD §4.71a. In the matter of the OSA condition, the Board unanimously recommends no change in the PEB adjudication as not unfitting. 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 his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Patellofemoral Syndrome, Right Knee | 5299-5260 | 10% |
| Patellofemoral Syndrome, Left Knee | 5299-5260 | 10% |
| **COMBINED (Incorporating BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120123, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

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Dear Mr. xxxxxx

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2012-00086.

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without re-characterization of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

 Sincerely,

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

PDBR PD-2012-00086

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

 The pertinent military records of the Department of the Air Force relating xxxxxxxxxx, xxxxxxxxxx, be corrected to show that the diagnosis in his finding of unfitness was Patellofemoral Syndrome, Right Knee, VASRD Code 5299-5260; rated at 10% and Patellofemoral Syndrome, Left Knee; VASRD Code 5299-5260; rated at 10%; with a combined disability rating of 20% rather than Bilateral Chondromalacia Patella, Patellafemoral Syndrome, VASRD Code 5099-5003; rated at 10%.

 Director

 Air Force Review Boards Agency