RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200093 SEPARATION DATE: 20080215

BOARD DATE: 20120816

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (19D/Cavalry Scout), medically separated for bilateral patellofemoral pain syndrome. The condition was not a result of injury or associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded bilateral knee patellofemoral syndrome to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the bilateral patellofemoral pain syndrome condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). An administrative correction was made to reflect disability rating guidance IAW NDAA 2008, but there was no change in the adjudication.

CI CONTENTION: “The knees were rated incorrectly. Also I have severe Post Traumatic Stress Disorder. While undergoing the Medical Evaluation Board and the Physical Evaluation Board, I was told only one injury could be evaluated by the Boards. As a result, I was released and my PTSD has become so severe that I cannot work and have received a 100%. I understand the Boards policy of rating and request that PTSD and my knees be considered.”

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 ratings for unfitting conditions will be reviewed in all cases. The unfitting bilateral knee condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The requested posttraumatic stress disorder (PTSD) condition 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **USAPDA Admin Correction – Dated 20090218** | **VA (3 Mos. Post-Separation) – All Effective Date 20080216** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Patellofemoral Pain | 5099-5003 | 10% | Right Patellofemoral Syndrome | 5099-5014 | 0%\* | 20080512 |
| Left Patellofemoral Syndrome | 5099-5014 | 0%\* | 20080512 |
| ↓No Additional MEB/PEB Entries↓ | Post Traumatic Stress Disorder | 9411 | 30%\* | 20080521 |
| Not Service-Connected x 1 | 20080512 |
| **Combined: 10%** | **Combined: 30%\*** |

\*Each knee increased to 10% and PTSD increased to 100% based on exam of 20090513; effective 20090211 (combined 100%)

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that he was told only one injury could be evaluated by the boards. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service-improprieties in the processing of his case. The Board’s authority, as defined in DoDI 6044.40, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. 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. 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. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Bilateral Knee Condition. The bilateral knee pain presented as a significant issue in June 2007, but according to the record had been a problem for the preceding one or two years. Per the narrative summary (NARSUM), completed 4 months prior to separation, the pain was intermittent and localized anteriorly and behind the kneecaps. Running, jumping and climbing stairs caused pain. He denied knee locking. Although the CI was wearing prescribed knee braces, they were said to not be significantly helpful. The examination revealed “full range of motion by goniometer,” but specific measurements were not in evidence. Gait was normal and there was no effusion and no sign of instability. Mild patellar crepitus and retropatellar and trochlear tenderness were present. X-rays were normal, but magnetic resonance imaging (MRI) was not performed. The MEB examiner, 2 months prior to separation, reported the CI wearing bilateral knee braces. Tenderness of the kneecaps and the medial knees was present. The commander’s statement confirmed that the CI was only capable of performing limited duties due to his knee condition. The Compensation and Pension (C&P) examiner on 12 May 2008, 3 months after separation, reported the onset of knee pain was in 2004, but without a history of injury. The pain was intermittent, but caused difficulty running and jumping and was worse with prolonged standing. Pain flare-ups occurred weekly and lasted 1 to 2 days. Examination revealed a normal gait. Bilateral retropatellar tenderness was present. There was no swelling or laxity. Range-of-motion (ROM) measurements of each knee showed flexion of 140⁰ (normal 140⁰) extension of 0⁰ (normal 0⁰). There was no pain with motion of either knee and no limited motion after repetition. A psychologist C&P examiner, 3 months after separation, recorded that the CI experienced “pain and difficulty when he has to stand for a long time or has to walk a long distance.”

The Board directs attention to its rating recommendation based on the above evidence. The PEB combined patellofemoral pain of each knee as the single unfitting and solely rated condition, coded analogously to 5003. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each “unbundled” condition was unfitting in and of itself. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting; and, that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. Under the analogous code 5014 code (“osteomalacia”), the VA adjudicated a 0% rating for each knee. Under this code, a rating is based on limitation of motion. In this case ROM was completely normal, and the VA also concluded there was no objective evidence of pain on motion to warrant a 10% rating. While the Board is aware that a second VA examination on 13 May 2009, performed 15 months after separation, was the basis for a subsequent rating increase by the VA, findings from this exam had decreased probative value to its deliberation, since the exam falls outside the 12-month interval for special consideration. The Board considered that there was no compensable limitation of motion, no radiographic evidence of degenerative changes, and no painful motion supporting application of §4.59 (painful motion). The Board debated whether the CI’s symptoms were severe enough to warrant application of §4.40 (functional loss) which states that “a part which becomes painful on use must be regarded as seriously disabled.” In this regard, the Board considered the CI’s reported history of intermittent pain, the clear interference with his MOS duties as evidenced by the commander’s statement and an activity-limiting permanent profile, physical examination findings of bilateral knee tenderness and the fact that the CI wore knee braces. 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 right patellofemoral pain syndrome condition and 10% for the left patellofemoral pain syndrome condition, coded 5099-5003.

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 bilateral patellofemoral pain syndrome condition, the Board unanimously recommends that it be rated for two separate unfitting conditions as follows: right patellofemoral pain syndrome condition coded 5099-5003 and rated 10%, and left patellofemoral pain syndrome condition coded 5099-5003 and rated 10%; both 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 his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Patellofemoral Pain Syndrome | 5099-5003 | 10% |
| Left Patellofemoral Pain Syndrome | 5099-5003 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120126, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXX

 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXX, AR20120015239 (PD201200093)

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 20% 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 XXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA