RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200102 SEPARATION DATE: 20040430

BOARD DATE: 20120503

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10/Bradley Fighting Vehicle Driver), medically separated for chronic bilateral knee pain. He did not respond adequately to conservative, non-operative 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). Chondromalacia/RPPS was forwarded 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 knee condition as unfitting, rated 10% with application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Was told my knee won't get better without knee replacement, surgeon will not perform procedure because I'm too young. Also, the VA diagnosed me with PTSD which is service connected and not part of my discharge paperwork.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20040227** | **VA (4 Mo. Pre Separation) – All Effective Date 20040501** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Pain Bilateral Knee  | 5099-5003 | 10% | Chondromalacia Patella, Left Knee | 5099-5010 | 10% | 20040120 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service-Connected x 0 | 20040120 |
| **Combined: 10%** | **Combined: 10%\*** |

\*30% PTSD effective 20080520 for combined 40%

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI's contention suggesting that service ratings should have been conferred for conditions not diagnosed while in the service (but later determined to be service-connected by the DVA). 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 DVA, however, 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.

Bilateral Knee Condition. The CI developed left knee pain while playing basketball following a twisting injury in December 2001. He was evaluated by orthopedics who deemed him a non-surgical candidate after reviewing an MRI which revealed normal ligament and cartilage exam and chondromalacia of the left patella. He did not seek further care until a year later when he presented to a troop medical clinic for increasing bilateral knee pain while he had served on a 6 month Kosovo deployment. No new injury had occurred and after no improvement with rest and ice the examiner recommended a P3 profile and a MEB was initiated since the CI was not planning on reenlisting. The commander’s statement documented the CI had been removed from the more arduous task of automatic rifleman to being a Bradley driver to help facilitate recovery of his knees; however, this was a temporary rotation as he would be required to rotate to another infantry position. The narrative summary (NARSUM) completed 4 months prior to separation for the MEB documented the following knee symptoms; constant pain of the left knee rated at 6/10 on a pain scale (10 being the worst) and at its worst is 10/10, and right knee pain secondary to favoring it, rated at 4-5/10. The physical exam demonstrated crepitus and patella tendon pain but did not delineate if one or both knees were being evaluated. The examiner did not comment on ROM’s, but did document normal ligament and cartilage exams. The VA Compensation and Pension exam (C&P) completed 3 months prior to separation, documented symptoms of constant left knee pain with a grinding noise and no incapacitation, an inability to run, climb stairs, bend frequently and jump. He did not use a knee brace and received relief with Motrin and physical therapy. The physical exam demonstrated a normal gait, appearance, ROM’s, and ligament and cartilage testing of both knees, and demonstrated crepitus and anterior tenderness of the left knee. The examiner referenced the MRI from the service treatment record and diagnosed chrondromalacia patella of the left knee.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and rated 10%. 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. The Board notes that “bundling,” the combining of conditions under a single code, is permissible under VASRD code 5003. 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. The evidence reflected a thorough evaluation of the left knee with x-ray evidence of chondromalacia. At the time of the NARSUM the CI was favoring the right knee and it had become painful but there was no evidence that the right knee met any §4.71a criteria to rate it as a separate joint. Therefore the Board is not pursuing separate rating and fitness evaluations. In addition, the Board noted the VA evaluated both knees but rated only the left knee at 10% and coded analogously to 5010 (arthritis, due to trauma). Finally, the Board noted future rating VA rating decisions did not reflect a rating for the right knee. There was no viable approach to a higher rating which was countenanced by the VASRD. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the bilateral knee condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD). This condition was reviewed by the action officer and considered by the Board. The Board makes note that PTSD was not in the core DES and was derived from VA evaluations performed after separation, diagnosing conditions which were not addressed by the PEB. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document (DA Form 3947), the PEB adjudication document (DA Form 199), the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Correction of Military Records (ABCMR).

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation 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. As discussed above, PEB reliance on the USAPDA pain policy for rating knee condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the bilateral knee condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. The Board unanimously agrees that there were no other conditions, specifically the contended PTSD condition, eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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** |
| Chronic Bilateral Knee Pain | 5099-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120121, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXX

 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 XXXXXXXXXXXXX, AR20120009406 (PD201200102)

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA