RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200187 SEPARATION DATE: 20011015

BOARD DATE: 20120918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (96B/Intelligence Analyst), medically separated for bilateral anterior knee pain. 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 no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the bilateral anterior knee pain condition as unfitting, rated 0%, with likely application of service rules. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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. 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 20010703** | **VA (2 Mos. Pre-Separation) – All Effective Date 20011016** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Anterior Knee Pain | 5299-5003 | 0% | Chondromalacia Patella, Left Knee | 5299-5260 | 0%\* | 20010830 |
| Chondromalacia Patella, Right Knee | 5299-5260 | 0%\* | 20010830 |
|  ↓No Additional MEB/PEB Entries↓ | Cold Weather Injury, Right Foot | 7122 | 20% | 20010830 |
| Cold Weather Injury, Left Foot | 7122 | 20% | 20010830 |
| 0% X 3 / Not Service-Connected x 3 | 20010830 |
| **Combined: 0%** |  **Combined: 40%**  |

\*Increased to 10% for each knee effective 20050309 based on C&P examination 20050624

ANALYSIS SUMMARY:

Bilateral Anterior Knee Pain Condition. The MEB narrative summary (NARSUM), dated 15 May 2001, reported a 3 year history of bilateral anterior knee pain without history of specific injury other than the rigors of his military duties, diagnosed as patellofemoral pain syndrome. The CI reported pain with vigorous activities. On examination there was full range-of-motion (ROM) of both knees (flexion 150 degrees, extension to 0 degrees). Examination findings consistent with the diagnosis were present. There was no knee joint instability or signs of meniscus problems. X-rays in 1999 of the knees were normal. On 23 May 2001 the CI took the APFT and passed the 2.5 mile walk (32 minutes, 36 seconds). The PEB, found the bilateral knee pain condition unfitting rated 0% (5299-5003) noting the full ROM and normal X-rays. The VA Compensation and Pension (C&P) examination, performed 30 August 2001, 6 weeks prior to separation, recorded pain with running, prolonged walking, and going up and down hills. On examination, gait was normal. The CI was able to squat down and rise up with ease but with an audible snapping sensation of both knees and complaint of pain. There was tenderness about the patella and palpable patellar grinding with motion consistent with the diagnosis. There was no instability of the knee joints. On ROM examination, the right knee flexed to 120 degrees, and the left knee flexed to 135 degrees. Both knees extended fully to zero degrees. There was pain with motion. X-rays of both knees on that date were again normal. The DVA adjudicated 0% ratings based on a non-compensable ROM. Four years later the DVA increased the rating to 10% for each knee based on C&P examination 24 June 2005 reflecting worsened examination findings. The Board directs attention to its rating recommendation based on the above evidence. The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and adjudicated a single 0% for both knees.

The Board noted that PEBs often combine multiple conditions under a single rating when those conditions considered individually are not separately unfitting and would not cause the member to be referred into the Disability Evaluation System (DES) or be found unfit because of physical disability (DoDI 1332.38, paragraph E3.P3.4.4.; “Overall Effect”). This approach by the PEB reflects its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. When combining conditions in this manner, the PEBs concluded that there was no need for separate fitness adjudications. When considering a separate rating for each condition, the Board first must satisfy the requirement that each unbundled condition was unfitting in and of itself based on a preponderance of evidence. When the Board recommends separate fitness recommendations in this circumstance, its recommendations may not produce a lower combined rating than that of the PEB.

The Board also noted that “bundling,” the combining of two or more major joints (in this case knees), is permissible under the VASRD 5003 rating requirements, and that this approach does not compromise the VASRD §4.7 directive to choose the higher of two valid ratings. Under code 5003, when the limitation of motion of the specific joint or joints involved is non-compensable under the appropriate diagnostic codes, a rating of 10% is applied for each such major joint or group of minor joints affected by limitation of motion. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.

In this case, the evidence of the service treatment record indicated both knees were equally symptomatic and together were considered unfitting. The symptoms and examination findings were essentially the same in both knees. Examinations documented normal/near normal and therefore non-compensable ROM. Board members noted that the MEB NARSUM examination supported the single 0% for both knees together adjudicated by the PEB. X-rays were normal, and there was no painful motion on examination. On the C&P examination, painful motion and tenderness were reported supporting a 10% rating for each knee; however Board members noted that the CI was able to walk the 2.5 mile fitness test at approximately a five mile per hour pace. The Board discussed the differences between the two examinations and considered the functional impairments reflected in the service treatment records and concluded the preponderance of evidence supported a 0% rating for the bilateral knee condition at the time of separation. There was no dislocated meniscus causing locking to warrant consideration under diagnostic code 5258. There was no instability to warrant consideration for an additional rating using diagnostic code 5257. 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 adjudication for the bilateral knee 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 DoDI 1332.39 for rating the bilateral knee pain condition was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the bilateral patellofemoral syndrome 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** |
| Bilateral Patellofemoral Syndrome | 5299-5003 | 0% |
|  | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120217, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXX, AR20120017733 (PD201200187)

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 XXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA