RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200193 SEPARATION DATE: 20020921

BOARD DATE: 20120730

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (91W1O / Health Care Specialist), medically separated for atraumatic onset of bilateral knee pain. Knee pain started in 2000 after a road march. She had occasional swelling and inadequate response to physical therapy, prescribed orthotics, and pain medications. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS). She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Bilateral pes planus condition, identified in the rating chart below, was also forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the bilateral knee pain condition as unfitting, rated 0%, with application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “Veterans Knee and back pain continue and veteran was rated 20% by the Department of Veterans Affairs for back pain and is pending a new evaluation of her knee pain. In addition, veteran now knows previous surgeries on reproductive organs should be considered as new evidence.”

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 pain condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions [back pain and surgeries on reproductive organs] 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 Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20020701** | **VA (3 Mos. Post-Separation) – All Effective Date 20020922** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Pain | 5099-5003 | 0% | Stress Reaction Changes, L. Knee | 5299-5019 | NSC | 20021204 |
| Stress Reaction Changes, R. Knee | 5299-5019 | NSC | 20021204 |
| Bilateral Pes Planus | Not Unfitting | Bilateral Pes Planus | 5276 | 10%\* | 20021204 |
| ↓No Additional MEB/PEB Entries↓ | Low Back Strain | 5295 | 20% | 20021204 |
| Not Service-Connected x 3 | 20021204 |
| **Combined: 0%** | **Combined: 30%\*** |

\* Bilateral Pes Planus, 5276 at 10% increased to 10% for each foot, effective 20051222 (combined 40%)

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (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.

Atraumatic onset of bilateral knee pain condition. There was one goniometric range-of-motion (ROM) evaluations in evidence, with an additional non-goniometric exam of the knees, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Bilateral Knee ROM | MEB ~4 Mo. Pre-Sep | VA C&P ~3 Mos. Post-Sep |
| Flexion (140⁰ Normal) | Full Active and Passive ROM | 140⁰ |
| Extension (0⁰ Normal) | 0⁰ |
| Comment | Mild joint line pain; tender to palpation; no instability; motor and sensory normal (see text) | Without pain; no instability or change on repetition; normal imaging |
| §4.71a Rating | 10% | 0% |

At the MEB exam, the CI reported bilateral knee pain of 4-5/10 with increase up to 7-8/10 after exercise. She related occasional swelling after heavy use without locking. Radiographs were essentially normal and bone scan in October 2001 indicated improved stress changes from her September 2000 bone scan. The MEB physical exam noted a normal gait with tenderness as the only positive knee exam finding as summarized above. At the VA Compensation and Pension (C&P) exam after separation, the CI reported bilateral knee pain with “some amelioration of her symptoms with rest with some mild exacerbating residuals during standing and walking.” Exam documented normal gait and normal knee exams as charted above with negative DeLuca criteria. The VA adjudged this condition as not service connected.

The Board directs attention to its rating recommendation based on the above evidence. There was no history of surgery or instability, and the CI’s condition improved between the time of MEB and the initial VA exam (no complaint of swelling and no documented abnormal imaging at the time of the post-separation VA exam).

Absent the USAPDA pain policy, there was sufficient evidence of abnormal imaging and functional loss (IAW VASRD §4.40) for a 10% rating under the analogous coding of either 5022 (Periostitis) or 5019 (Bursitis) using the rating criteria of 5003 for involvement of two or more major joints. There were no periods of incapacitation or objective evidence of painful motion or pain-limited motion for a higher rating, or individual rating of each knee joint. 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 bilateral knee condition, coded 5099-5019.

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 the USAPDA pain policy for rating the bilateral 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, the Board unanimously recommends a disability rating of 10%, coded 5099-5019 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral Knee Pain | 5099-5019 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120208, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXX, AR20120015484 (PD201200193)

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 10% 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 XXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA