RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200333 SEPARATION DATE: 20030520

BOARD DATE: 20120906

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91B/Medical Specialist), medically separated for chronic bilateral knee pain, due to patellofemoral pain syndrome. 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 and referred for a Medical Evaluation Board (MEB). Non-infectious epididymitis condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic bilateral knee pain condition as unfitting, rated 10%, 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 10% disability rating.

CI CONTENTION: “Bilateral Knee Pain (RPPS) Retro Patellar Pain Syndrome, Low Back Pain, Loss Of Reproductive Organ.” In his letter accompanying his application, the CI contends for low back pain and headaches, and lists all of his service connected VA ratings.

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 loss of reproductive organ condition requested for consideration refers to epididymitis considered by the PEB meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below in addition to the unfitting bilateral patellofemoral pain syndrome. The other requested conditions are not within the Board’s purview. The remaining conditions rated by the Department of Veterans’ Affairs (DVA) at separation and listed on the DD 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 Army Board for the Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030226** | | | **VA (At Separation) – All Effective Date 20030521** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilat. Patello-femoral Pain Syndrome | 5099-5003 | 10% | Retropatellar Pain Syn. Lt. Knee | 5024 | 10%\* | 20030508 |
| Retropatellar Pain Syn. Rt. Knee | 5024 | 10%\* | 20030508 |
| Noninfect. Epididymitis | Not Unfitting | | Residuals, Rt. Orchiectomy… | 7524 | 0% | 20030508 |
| ↓No Additional MEB/PEB Entries↓ | | | Chronic Left Ankle Sprain | 5271-5024 | 10% | 20030508 |
| Chronic Lumbosacral Strain | 5295 | 10% | 20030508 |
| 0% X 6 / Not Service-Connected x 1 | | | 20030508 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

\*initial VARD 20030609 assigned a 0% rating for each knee; subsequent decision 20040520 increased each knee to 10% effective the day after separation 20030521.

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.

Chronic Bilateral Knee Pain Condition. The CI initially developed left knee pain in early 2001 with subsequent right as well as left knee pain with running. Orthopedic evaluation in July 2001 addressed only left knee pain without mention of right knee problems. On examination, there was full range-of-motion (ROM), normal patellar tracking, no instability, and normal strength. A normal gait was documented by physical therapy. Patellofemoral pain syndrome was diagnosed, a non-disqualifying L2 profile was issued, and the CI completed training. Although the orthopedic surgery evaluation addressed only left knee pain, the physical profile from September 2001 also listed the right knee. Approximately a year later, activity limiting bilateral knee pain prompted re-evaluation. A 21 August 2002 physical therapy evaluation noted continued problems with bilateral knee pain with running, but mostly of the left knee. On examination there was no swelling and no tenderness to palpation, however there was positive patellofemoral grind of the left knee. Gait and muscle strength were normal. There was slight pain with hopping and squatting. ROM was normal (flexion to 135 degrees, extension 0 degrees) without pain on motion.

The MEB narrative summary (NARSUM), performed on 12 December 2002, recorded a history of bilateral knee pain due to patellofemoral pain syndrome for one year interfering with running, road marches and prolonged walking or standing. There was full active ROM in both knees (flexion to 130 degrees, extension 0 degrees). There was no instability and negative examination testing for meniscus problems. There was a positive patellar grind consistent with the diagnosis of patellofemoral pain syndrome. An L3 profile for bilateral knee pain was issued. The PEB found the bilateral knee pain unfit and rated 10% for the bilateral condition under diagnostic code 5003 with application of the USAPDA pain policy. The VA Compensation and Pension (C&P) examination was performed on 8 May 2003, 2 weeks prior to separation. The history of bilateral knee pain with activity was recorded. On examination, gait and muscle strength were normal. There was no swelling, effusion, or instability. There was tenderness to palpation about the patella. ROM was normal (flexion to 130 degrees, extension 0 degrees) without pain on motion. The initial VA rating decision dated 9 June 2003, assigned a zero percent rating for each knee citing full ROM without evidence of pain on motion. The ratings were subsequently increased to 10% for each knee effective the day after separation (VA document 20 May 2004).

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 10% for both knees. The Board notes that “bundling,” the combining of conditions under a single code, 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. 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 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. However, 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. 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. The Board therefore considered whether the each knee considered alone was unfitting for continued military service. The left knee pain was the main focus of clinical attention over time and was noted by the August 2002 physical therapy evaluation to be the predominant symptomatic knee (“mostly left;” left greater than right). All members agreed that the left knee patellofemoral pain syndrome, as an isolated condition, prevented the CI from meeting the physical requirements of his MOS and accordingly merits an unfitting determination and separate rating. With regard to the rating for the left knee, examinations documented normal, and therefore, non-compensable ROM. Motion was not painful during examinations and tenderness was absent. Board members agreed that this evidence did not support a 10% rating, however the Board considered the functional impairment resulting from the chronic left knee pain condition and concluded a 10% rating was appropriate with application of §4.40, §4.45 and §4.3. There was no meniscus pathology or instability to warrant consideration under other diagnostic codes for rating.

The Board next considered whether the right knee patellofemoral pain syndrome, uncoupled from the left knee, was unfitting for continued military service. The Board considered that the left knee was the predominant problem and that there was little mention of the right knee. The Board noted the orthopedic evaluations in July and August 2001 made no mention of right knee problems. The physical therapy evaluation performed in August 2002 recorded that pain was mostly of the left knee. The MEB NARSUM and subsequent C&P examination made no distinction. Board members concluded there was not a preponderance of evidence showing that the right knee condition alone was sufficiently severe to significantly interfere with performance of duties. 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 unfitting left knee condition coded 5299-5260, and recommends a not unfit determination for right knee condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was non-infectious epididymitis. 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 experience chronic right testicular pain beginning in early 2001 leading the right orchiectomy in May 2002. According to the NARSUM, surgery “essentially took care of his urologic problem.” At the C&P examination on 8 May 2003, the CI reported good outcome following this surgery with resolution of the prior pain. The conditions was not profiled, implicated in the commander’s statement, and was not judged to fail retention standards. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended condition, and therefore, no additional disability rating can be recommended.

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 pain condition was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the left knee patellofemoral pain syndrome condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5260 IAW VASRD §4.71a. In the matter of the right knee patellofemoral pain syndrome condition, as combined in the PEB adjudication, the Board unanimously agrees that it could not be satisfactorily established as independently unfitting; and, therefore, is not ratable for disability. In the matter of the contended non-infectious epididymitis condition, the Board unanimously recommends no change from the PEB determination 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Patellofemoral Syndrome | 5299-5003 | 10% |
| Right Patellofemoral Syndrome | Not Unfit | -- |
|  | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120326, 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 XXXXXXXXXXXXXXXXXXXXXXX, AR20120016894 (PD201200333)

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 description without modification of the combined rating and 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