RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200583 SEPARATION DATE: 20030213

BOARD DATE: 20120918

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B1O/Infantry), medically separated for chronic bilateral knee pain. Chronic knee pain secondary to chondromalacia patella could not be adequately improved 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 chronic bilateral knee pain 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% disability rating.

CI CONTENTION: “Initially, the rating was too low, also why did I have to use my disability that I was entitled to, used to pay back severance pay for 2 yrs. After separation from the Army, the knee damage was so severe that I couldn’t then, nor could I now have the career I always wanted to. (police officer.) After 10 years I feel like the disability should be much higher, however it is just under the level of being entitled to much more benefits then I currently have.”

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. The knee condition as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. 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 20030113** | | | **VA (~3 Pre-Separation) – All Effective Date 20030213** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Bilateral Knee Pain | 5099-5003 | 10% | Chondromalacia, Left Knee | 5299-5260 | 10%\* | STR |
| Chondromalacia, Left Knee | 5299-5260 | 10%\* | STR |
| No Additional MEB/PEB Entries | | | Not Service-Connected x 1 | | | STR |
| **Combined: 10%** | | | **Combined: 20%\*** | | | |

\*10% each knee continued by VARD 20070305. Increased to 20% each knee by VARD 20090923 effective 20090713.

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 Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However 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 his 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 the Veteran’s Administration Schedule for Rating Disability (VASRD) standards, based on severity at the time of separation.

The CI questions why his VA disability compensation benefits were offset by his military disability severance pay. The Board’s role is confined to the review of medical records and evidence to assess the fairness of service rating and fitness determinations at separation, therefore, this issue is outside the Board’s purview.

Chronic Bilateral Knee Pain Condition. The CI developed bilateral knee pain without injury or trauma during 2001. Magnetic resonance imaging (MRI) of both knees in May 2002 demonstrated chondromalacia patella, left greater than right, and degenerative changes of the menisci without tears. Ligaments were intact. Multiple physical therapy and orthopedic examinations between December 2001 and October 2002 documented “full” range-of-motion (ROM) of both knees.

The MEB narrative summary (NARSUM), dated 6 November 2002, cited the orthopedic examination from 22 October 2002. ROM of both knees was flexion of 130 degrees and extension to zero degrees. There was significant patellofemoral crepitus with motion. There was normal patellar mobility, alignment and tracking. Patellar apprehension test was negative in both knees. There was no tenderness, instability, or signs of meniscus problems. 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 with application of the USAPDA pain policy. 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. 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 generally indicated the left knee was worse than the right, however the right knee was consistently noted as limiting of activity along the with the left.

Therefore the Board concluded the preponderance of evidence supported the conclusion that each knee, when considered alone, would have caused referral into the DES and was unfitting. The Board directs attention to its rating recommendation based on the above evidence. The symptoms and examination findings were essentially the same in both knees. Examinations documented normal/near normal, and therefore non-compensable ROM. The Board considered the functional impairments reflected in the service treatment records, the documented pathology on imaging and examinations findings and concluded the preponderance of evidence supported a separate 10% rating for each knee at the time of separation. There was no meniscus pathology or instability consideration under those respective diagnostic codes (5258, 5257). 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 knee condition and 10% for the left knee condition coded 5299-5260.

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 10% was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic bilateral knee pain condition, the Board unanimously recommends a disability rating of 10% for each knee, coded 5299-5260 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** |
| Chronic Knee Pain Due To Chondromalacia, Right Knee | 5299-5260 | 10% |
| Chronic Knee Pain Due To Chondromalacia, Left Knee | 5299-5260 | 10% |
| **COMBINED (w/ BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120603, 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 XXXXXXXXXXXXXXXXXXX, AR20120017716 (PD201200583)

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 XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA