RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200776 SEPARATION DATE: 20020303

BOARD DATE: 20121016

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63B, Wheeled Vehicle Mechanic), medically separated for right knee pain. The condition began in 1999 as a consequence of injury. He did not respond adequately to operative and rehabilitative treatment and was unable 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 right knee condition, characterized as “patellofemoral chondromalacia, right knee, severe”, was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated chronic right knee pain as unfitting, rated 0% with likely application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: “The pain I have every day is not reflected in my medical records or a doctors findings. Additional pain is being caused by the service connected disabilities from my body compensating.” *[sic].*

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in 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.” 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 PEB – Dated 2020109** | | | **VA ( ~2 ½ Mo. Post-Separation) – Effective 20020304** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Knee Pain | 5299-5003 | 0% | Right Knee Osteoarthritis | 5003-5259 | 10%\* | 20020517 |
| ↓No Additional MEB/PEB Entries↓ | | | Left Knee Osteoarthritis | 5003-5260 | 10% | 20020517 |
| Tinnitus | 6260 | 10% | 20020521 |
| Lumbar Spine Spondylosis | 5299-5292 | 10%\*\* | 20020517 |
| 0% x 3 | | | 20020517 |
| **Combined: x0%** | | | **Combined: x40%\*** | | | |

\*Rating decision 20090509 increased to 20% and added right knee instability coded 5257 at 10%, both effective 20090210, based on later exam; combined 60%.

\*\*Rating decision 20051007 increased to 20% effective 20050524 based on later exam.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment and worsening severity with which his service-incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Right Knee Condition. The CI underwent right anterior cruciate ligament (ACL) reconstruction and debridement of a medial meniscal tear on 18 July 2000. Persistent pain led to an additional arthroscopy performed on 12 June 2001 for patellar tendon debridement and repair; chondromalacia of the trochlea and medial femoral condyle was noted at that time. There were three goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Right Knee ROM in degrees | PT ~7 Mo. Pre-Sep | NARSUM ~2 ½ Mo. Pre-Sep | VA C&P ~2 ½ Mo. Post-Sep |
| Flexion (140 Normal) | 120 | 125 | 70 |
| Extension (0 Normal) | -- | -5\* | 0 |
| Comment | Stable graft | +tenderness, crepitus | Occasional limp |
| §4.71a Rating | 10% | 10% | 10% |

\*Taken to mean hyperextension

At the orthopedic narrative summary (NARSUM) examination performed on 18 December 2001 indicated the CI complained of daily right knee pain with weight bearing activities. Physical exam noted mild tenderness of the central portion of the patellar tendon, slight patellofemoral crepitus and positive patellar grind. There was no swelling and no sign of knee instability. At the VA examination performed on 17 May 2002, the CI complained of pain and swelling. He denied recurrent subluxation, instability, dislocation or locking. Prolonged standing or walking caused flare-ups, which were alleviated by rest and ice. Examination showed no swelling and no signs of instability; one maneuver for meniscal injury was positive. X-rays showed degenerative arthritis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB assigned a 0% rating with likely application of the USAPDA pain policy for rating. Although limitation of motion was noncompensable, there is sufficient evidence of pain with use (§4.40) to justify a minimal compensable rating under §4.71a. The Board could find no support for rating higher than 10% under alternate knee codes. 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.

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 right knee condition was operant in this case and it was adjudicated independently of that policy by the Board. In the matter of the chronic right knee pain condition, the Board unanimously recommends a disability rating of 10%, coded 5299-5003, 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 Right Knee Pain | 5299-5003 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120602, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran’s Affairs Treatment Record.

XXXXXXXXXXXXXXXXX

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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXX, AR20120019876 (PD201200776)

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 XXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA