RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1200803 SEPARATION DATE: 20020405

BOARD DATE: 20121018

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a SPC/E-4 (95B, Military Police) medically separated for bilateral knee pain due to retropatellar pain syndrome (RPPS) and tibial plateau stress reaction (TPSR). The CI was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent L-4 profile and underwent a Medical Evaluation Board (MEB). The MEB referred him to a Physical Evaluation Board (PEB). In addition to the knee conditions, a mental condition (adjustment disorder with depressed mood) was also listed on the DA Form 3947. The PEB found the knees unfitting, and assigned a rating of 0%. The mental condition was determined to be “not unfitting.” The CI accepted the PEB findings, and was medically separated with a 0% disability rating.

CI’s CONTENTION: “Have my case looked at according to VASRD instead of prior DoD ratings. The VA awarded me a 50%, but the Army issued a 0% with severance. Therefore, I had a disability rating less than 20% and was found ineligible for retirement. Finally, I was permanently separated from military service after September 10, 2001, but before September 30, 2009. Refer to VA Form 3288, Application for a Review by the PDBR of the Rating Awarded Accompanying a Medical Separation from the Armed Forces of the United States - Statement #1, Application for a Review by the PDBR of the Rating Awarded Accompanying a Medical Separation from the Armed Forces of the United States - Statement #2, VA determination letters, & DD 214.” In addition to the above contention, the CI has written a three page memo which was reviewed and considered by the Board.

SCOPE OF REVIEW: The Board’s scope of review as defined in the Department of Defense Instruction (DoDI) 6040.44, 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 unfitting knee condition (bilateral retropatellar pain syndrome & bilateral tibial plateau stress reaction) and the adjustment disorder condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The tinnitus condition rated by the VA and noted in the CI’s written statement to the PDBR is not within the Board’s purview. Any condition outside the Board’s defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – dated 20011213** | | | **VA (3 mos. Pre-Separation) – All Effective 20020406** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Knee Pain | 5099-5003 | 0% | Chronic Pain, Right Knee | 5299-5014 | 10% | 20020131 |
| Chronic Pain, Left Knee | 5299-5014 | 10% | 20020131 |
| Adjustment Disorder | Not Unfitting | | Adjustment Disorder | 9440 | 10%\* | 20020206 |
| No Additional MEB/PEB Entries | | | Tinnitus | 6260 | 10% | 20020126 |
| Not Service Connected (NSC) x 3 | | | 20020131 |
| **Combined: 0%** | | | **Combined: 40%\*** | | | |

\*The VA rating for adjustment disorder was later increased to 30%, by a VA Rating Decision (VARD) dated 20050112

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertion that the PEB used DoD ratings instead of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted improprieties in the disposition of a case. In addition, 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. The DES has neither the role nor the authority to compensate members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans’ Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a member’s career, and then only to the degree of severity present at the time of separation. The DVA, however, is empowered to compensate for 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 change over time.

Bilateral Knee Pain. The CI began having knee pain in August 1998. There was no history of any specific trauma or injury to the knees. As noted above, the bilateral knee pain did not resolve with treatment and he was referred to a MEB. His MEB orthopedic exam performed on   
10 October 2001. At that exam, there was no erythema, effusion, ecchymosis, tenderness or crepitus. Both extensor mechanisms were intact. There was negative varus/valgus stress test, negative anterior/posterior drawer test, negative Lachman test, negative McMurray test, negative patellar grind test and negative pivot-shift test. The knees were symmetrical. Both knees flexed to 130 degrees and extended to 0 degrees. For orthopedic diagnoses, the examiner listed bilateral retropatellar pain syndrome (RPPS) and bilateral tibial plateau stress reaction (TPSR). On 31 January 2002, 9 weeks prior to separation, the CI had a VA general medical Compensation and Pension (C&P) exam. At that time, he was in no acute distress. Height was 69 inches, weight 218 pounds, BMI 32. He had a markedly antalgic gait and complained of right knee pain. Examination showed no evidence of soft tissue swelling or joint effusion. He had right medial joint line tenderness. Both knees had no evidence of ligamentous instability. McMurray's test was negative bilaterally. In the CI’s treatment record, two relevant range-of-motion (ROM) evaluations were noted, and are summarized below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Knee ROM | MEB – 25 weeks Pre-Sep  (20011010) | | VA C&P – 9 weeks Pre-Sep  (20020131) | |
| Left | Right | Left | Right |
| Flexion (140° is normal) | 130° | 130° | 135° | 130° |
| Extension (0° is normal) | 0° | 0° | 0° | 5° |
| Comment | Painful motion not mentioned | | Painful motion – bilaterally | |
| §4.71a Rating | 0% | 0% | 10%\* | 10%\* |

\*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. The Army PEB combined the CI’s knee pain into a single unfitting condition: Bilateral RPPS, with normal plain X-rays, positive bone scan for TPSR, positive patellar compression, intact ligaments, and normal ROM. The knee pain condition was coded 5099-5003 and rated at 0%. In contrast, the VA unbundled the two knees, and rated each knee at 10% for painful motion. The Board evaluated whether or not it was appropriate for the two knees to be “bundled” together. The Board must determine if the PEB’s approach of combining the conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW the VASRD §4.71a. If the Board judges that two or more separate ratings are warranted, however, it must satisfy the requirement that each ‘unbundled’ condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that the chronic painful condition in each knee, separately, would have rendered the CI unable to perform his required military duties. Accordingly, the Board recommends a separate disability rating for each knee.

The limitation of knee motion was essentially non-compensable based on the VASRD §4.71a diagnostic codes for loss of knee motion (5260 and 5261). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. There was no path to a rating higher than 10% for either knee since there was no evidence of ligamentous instability, subluxation, locking, or other significant joint abnormality. 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 chronic right knee pain, due to RPPS and TPSR. In like manner, the Board recommends a rating of 10% for chronic left knee pain, due to RPPS and TPSR.

Contended MEB/PEB Condition. Adjustment disorder with depressed mood was adjudicated by the PEB as not unfitting. The Board’s first charge with respect to this condition is to assess the appropriateness of the PEB’s fitness adjudication. 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 was seen by a mental health (MH) provider on 16 July 2001, and by a VA psychiatrist on   
6 February 2002. Neither of these two examiners documented any significant MH impairment. The MH condition was not profiled, and was not included in the commander’s statement. It was reviewed by the action officer and considered by the Board. There was no indication from the record that this mental condition significantly interfered with satisfactory duty performance. After due deliberation, and 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 this condition. Therefore, no additional disability ratings are 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. The PEB may have used the USAPDA pain policy for rating the bilateral knee pain condition, and the knee condition was adjudicated independently of that policy by the Board.

In the matter of the bilateral knee pain, the Board unanimously recommends that each joint be separately adjudicated as follows: an unfitting right knee condition coded 5299-5260 and rated 10%, and an unfitting left knee condition coded 5299-5260 and rated 10%, IAW VASRD §4.40, §4.45, §4.59, and §4.71a. In the matter of the adjustment disorder with depressed mood, the Board unanimously recommends no change in 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** |
| Right Knee Pain, due to RPPS and TPSR | 5299-5260 | 10% |
| Left Knee Pain, due to RPPS and TPSR | 5299-5260 | 10% |
| **COMBINED (with BLF)** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120614, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXX, AR20120019878 (PD201200803)

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 XXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA