RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxx CASE: PD-2019-00380

BRANCH OF SERVICE: Air Force SEPARATION DATE: 20041203

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Explosive Ordnance Disposal Journeyman, medically separated for “chronic right hip pain” and “chronic right knee pain,” rated 10% each, respectively, with a combined disability rating of 20%.

CI CONTENTION: The legal representative for the CI submitted a brief requesting increased, dual coded rating of the right knee (for pain and instability) while maintaining the disability rating for the right hip as awarded by the Physical Evaluation Board (PEB). The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel’s scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the PEB to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB), but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel’s defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel’s authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **SERVICE PEB - 20041004** | | | **VARD – 20050606** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Right Hip Pain | 5255 | 10% | Residuals…Right Hip Dislocation | 5252 | 10% | 20050321 |
| Chronic Right Knee Pain | 5257 | 10% | Residuals…Posterior Cruciate Ligament (PCL) Tear | 5260 | 20% |
| **COMBINED RATING: 20%** | | | **COMBINED RATING OF ALL VA CONDITIONS: 50%** | | | |

ANALYSIS SUMMARY:

Chronic Right Hip Pain. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent surgery in April 2003 to repair a fracture and dislocated right hip following an all-terrain vehicle accident. The 22 September 2004 MEB NARSUM examination, 2 months prior to separation, noted complaints of chronic right hip pain and inability to perform sit-ups, prolonged standing, kneeling, running and lifting. Physical findings showed no edema, erythema or tenderness, and full range of motion (ROM).

At the 21 March 2005 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported the inability to sit or stand for prolonged periods due to pain, which was rated at 8/10 during flare-ups, and somewhat relieved by a non-steroidal anti-inflammatory drug. Right hip flexion was to 100 degrees (normal 125 degrees), and external rotation to 30 degrees (normal 45 degrees), with painful motion and no instability.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right hip condition 10%, coded 5255 (femur, impairment of). The VA also rated the condition 10%, but coded 5252 (thigh, limitation of flexion of), based on the C&P examination, citing painful ROM and tenderness with log rolling, weakness, and fatigue. Panel members agreed that a 10% rating, and no higher, was justified for painful motion and functional loss IAW VASRD §§4.59 and 4.40. The panel considered other VASRD hip and analogous codes, but all were less applicable and/or not advantageous for rating. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the right hip condition.

Chronic Right Knee Pain. According to the STR and MEB NARSUM, the CI underwent surgery to repair an avulsion fracture of the right knee PCL tibial attachment after the accident mentioned above. At an orthopedic examination on 13 January 2004, 8 months after surgery, the provider noted negative posterior but positive anterior drawer testing, 2+ Lachman signs (instability of the anterior cruciate ligament (ACL)), and no effusion. Flexion was to 125 degrees (normal 140 degrees) and extension to 3 degrees (normal 0). An MRI the same month showed an intact ACL with PCL posterior fibers satisfactorily anchored to the tibial plateau, and intact medial and lateral collateral ligaments. There was some joint fluid within the supra-patellar recess. The 27 February 2004 orthopedic follow-up noted that the CI walked with a right-sided limp but was able to heel and toe walk without difficulty. The PCL and ACL were intact with negative varus/valgus testing. During an orthopedic visit on 23 June 2004, she reported no change in knee pain and she was unable to squat. Physical findings showed some pain on internal rotation and some patellofemoral joint crepitus. The knee was stable to varus and valgus tests, and posterior drawer and McMurray signs were negative. Flexion was to 125 degrees and extension to 0 degrees. The MEB NARSUM examination noted complaints of right knee pain, weakness, and giving out. The examiner documented tenderness of lateral superior aspect of the knee with no instability, edema, erythema or bruising.

At the C&P examination, the CI reported daily knee pain with an inability to kneel, squat, or run. Physical examination revealed positive Lachman and positive drawer tests, with grade 2 laxity to anterior and posterior stress of the knee, but no instability with varus and valgus tests. Flexion was to 110 degrees and extension to 0 degrees, with painful motion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right knee condition 10%, coded 5257 (knee, other impairment of: recurrent subluxation or lateral instability). The VA rated the right knee condition 20%, coded 5260 (leg, limitation of flexion), based on the C&P examination, citing positive Lachman’s and drawer tests, grade II laxity with anterior and posterior stress, painful limitation with ROM from 0-110 degrees. The panel majority agreed that a 10% rating, but no higher, was justified under code 5257, for slight instability documented at the January 2004 orthopedic examination. An additional 10% rating was justified for painful motion and functional loss to support a 10% rating, IAW VASRD §§4.59 and 4.40, coded 5010-5260. The panel considered other VASRD knee and analogous codes, but all were less applicable and/or not advantageous for rating. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 10%, coded 5257, and an additional 10% rating, coded 5010-5260 for the right knee condition.

BOARD FINDINGS: In the matter of the right hip condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the right knee condition, the panel majority recommends a disability rating of 20%, coded 5257-5010-5260 IAW VASRD §4.71a. The single voter for dissent recommends no change and did not elect to submit a minority opinion. There are no other conditions within the panel’s scope of review for consideration.

The panel recommends the CI’s prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

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| **CONDITION** | **VASRD CODE** | **PERMANENT RATING** |
| Right Hip Pain | 5255 | 10% |
| Right Knee Pain | 5257-5010-5260 | 20% |
| **COMBINED** | **30%** |

SAF/MRB

3351 Celmers Lane

JBA NAF Washington, MD 20762-6435

Dear XXXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2019-00380.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not in accordance with the guidelines of the Veterans Affairs Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept the recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at (210) 565-2273 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 90 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married, in such a case, failure to render an election will result in automatic enrollment by law.