RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900394 BOARD DATE: 20091118

SEPARATION DATE: 20041001

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was a Store Keeper 1 (Petty Officer First Class) (support equipment asset manager) medically separated from the Navy in 2004 after 15 years of service. The medical basis for the separation was bilateral hip dysplasia with the following four contributing conditions: mild chondromalacia patella in the left knee; polyarthralgias; osteoarthritis of the knees bilaterally with specifically chondral degeneration of the patellofemoral joint; and severe chondromalacia patella and bipolar lesions in the right knee with instability.

In September 2002, the CI first noticed a painful and swollen left knee after playing volleyball and later noticed a swollen right knee. Over time his symptoms expanded to also involve his hands and elbows and both hips. He was followed in both orthopedics and rheumatology. No rheumatologic condition that encompassed all his symptoms was diagnosed and his joints were evaluated as separate conditions.

Appropriate therapy failed to alleviate his symptoms and he was referred to the Navy Physical Evaluation Board (PEB). The Informal PEB initially determined the CI was fit for duty. The CI requested reconsideration and the Informal PEB then determined he was unfit for continued Naval service and he was separated with 10% disability for bilateral hip dysplasia with the following related (Category II) conditions: mild chondromalacia patella in the left knee; polyarthralgias; osteoarthritis of the knees bilaterally with specifically chondral degeneration of the patellofemoral joint; and severe chondromalacia patella and bipolar lesions in the right knee with instability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: “Less than 6 months after my discharge, I was rated by the VA as 70% individual unemployable permanently and totally disabled. I was granted 40% disabled for my hips alone in which the Navy PEB only gave me 10% total. The PEB gave me no ratings for my other conditions.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |
| --- |
| **Previous Determinations**  |
| **Service** | **VA** (Exam 1 month pre-discharge) |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| BILATERAL HIP DYSPLASIA (MEB Dx 3-5) | 5003 | 10% | **20040816** | LEFT HIP DYSPLASIA | 5252 | 20% | **20040909** | **20041002** |
| RIGHT HIP DYSPLASIA | 5252 | 20% | **20040909** | **20041002** |
| MILD CHONDROMALACIA PATELLA IN THE LEFT KNEE (MEB Dx 1-5) | NOT UNFITTING | OSTEOARTHRITIS AND CHONDROMALACIA PATELLA, LEFT KNEE | 5010-5260 | 0%THEN10% | **20040909****20050111 -20050622** | **20041002** |
| OSTEOARTHRITIS OF THE KNEES BILATERALLY WITH SPECIFICALLY CHONDRAL DEGENERATION OF THE PATELLOFEMORAL JOINT (MEB Dx 5-5) |
| SEVERE CHONDROMALACIA PATELLA AND BIPOLAR LESIONS IN THE RIGHT KNEE WITH INSTABILITY (MEB Dx 2-5) | OSTEOARTHRITIS AND CHONDROMALACIA PATELLA W/BIPOLAR LESION IN THE RIGHT KNEE (CLAIMED AS RIGHT KNEE BIPOLAR LESION WITH INSTABILITY) | 5010-5260 | 0%THEN10% | **20040909****20050111 -20050622** | **20041002** |
| POLYARTHRALGIAS (MEB Dx 4-5) | RIGHT OLECRANON ENTHESOPHYTE (CLAIMED ASPOLYARTHRALGIA OF THE RIGHT ELBOW AS DUE TO UNDIAGNOSEDILLNESS) | 5213 | 0%THEN10% | **20040909****20050111 -20050622** | **20041002** |
| LEFT OLECRANON ENTHESOPHYTE (CLAIMED ASPOLYARTHRALGIA OF THE LEFT ELBOW AS DUE TO UNDIAGNOSEDILLNESS) | 5213 | 0% | **20040909** | **20041002** |
| **NO ADDITIONAL DA FORM 3947 ENTRY** | MILD BRONCHIAL ASTHMA (CLAIMED AS CHRONIC BRONCHITIS/ASTHMA AS DUE TO UNDIAGNOSED ILNESS | 6602 | 10% | **20040909** | **20041002** |
| SCAR, LEFT SIDE OF FACE (CLAIMED AS 10" SCAR, LEFT FACE, PAINFUL AND TENDER) | 7800 | 10% | **20040909** | **20041002** |
| ADJUSTMENT DISORDER W/ANXIETY AND DEPRESSION | 9440 | 10%THEN30% | **20040909****20050111 -20050622** | **20041002** |
| EXTERNAL HEMORRHOID | 7336 | 0% | **20040909** | **20041002** |
|  | 7 X CONDITIONS (POLYARTHRALGIA ON LEFT HAND; POLYARTHRALGIA ON RIGHT WRIST; POLYARTHRALGIA ON RIGHT HAND; POLYARTHRALGIA ON LEFT WRIST; EXPOSURE TO ASBESTOS; HYPERCHOLE HEMANGIOMA AND FATTY STEATOSIS OF THE LIVER STEROLEMIA) |  | NSC | **20040909****20050111 -20050622** |  |
| **TOTAL Combined: 10*%*** | **TOTAL Combined (*incl non-PEB Dxs)*: 60%** **70%****(Bilateral factor 4.8 for 5260, 5252, 5252, 5260)** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

The initial Informal PEB determined the CI was fit for duty. The CI asked for reconsideration and was then found unfit. The original Narrative Summary (NARSUM) completed by a rheumatologist and dated 20040603 was revised on 20040624. An addendum completed by an orthopedic surgeon 20040629 was also reviewed by the PEB.

The PEB evaluated bilateral hip dysplasia, bilateral knee osteoarthritis, bilateral knee chondromalacia, and polyarthralgias and determined only the bilateral hip dysplasia was unfitting. No rationale for the fitness determination of each condition is available. Of note, the IPEB Work Card shows a diagnosis of obesity, but Commander’s letter stated the CI met height and weight standards.

The Rheumatologist who treated the CI opined that the CI’s knee problems were the main determinant of his inability to perform his duties on both his initial and revised NARSUMs. In the Addendum, the CI’s treating Orthopedic Surgeon did not mention fitness specifically and made no statements implying that either the hips or the knees were more problematic. However, the CI’s bilateral hip dysplasia was considered mild. The Commander’s letter does not mention any specific conditions, but listed activities the CI was unable to perform including: standing for long periods of time, crouching, kneeling, heavy lifting, walking, running, or any other athletic activities. He also stated the CI was not able to comply with PRT requirements. While some of these limitations could be caused by a hip problem, all of these functional limitations were attributed to the CI’s knee conditions by the Rheumatologist who was aware of the hip dysplasia. The CI also had other joint pains, but no specific diagnosis other than polyarthralgias and none of these appear to contribute to his unfitness. None of the functional limitations listed by the Rheumatologist or the Commander can be attributed to elbow or hand pain.

In September 2002, the CI first noticed a painful and swollen left knee after playing volleyball and later noticed a swollen right knee. Over time his symptoms expanded to also involve his hands and elbows and both hips. He was followed in both orthopedics and rheumatology. No rheumatologic condition that encompassed all his symptoms was diagnosed and his joints were evaluated as separate conditions.

Knees:

The CI had bilateral knee pain and swelling since 2002. The CI had osteoarthritis of the knees bilaterally with the right worse than the left. MRI 20040513 of the right knee indicated an anterolateral femoral condyle/trochlea osteochondral lesion with a related focal defect in the cortex of the central portion of the patella with the overlying cartilage intact. MRI 20040513 documented chondral degeneration of the left knee patellofemoral joint as well as the patella. Knee exam revealed mild swelling and patellofemoral and joint line tenderness bilaterally along with the limited range of motion (ROM) documented in the chart below. He was treated with NSAIDs and weight loss and smoking cessation were recommended. A knee sleeve was used for pain control. He received a series of weekly Synvisc injections without relief. He also had physical therapy which did not help very much. The CI complained of right knee collapse on several occasions with resultant falls causing mild injury. However, no examination revealed any knee instability. The chondromalacia was considered severe on the right and mild on the left. Orthopedics suggested knee replacement would be the only definitive treatment.

The VA examination revealed full ROM and no change with repeated motion as documented below. The VA initially rated both knees at 0% based on this examination but upon review of the CI’s MEB NARSUM and Service and VA treatment records changed this rating to 10% for pain limited motion IAW with VASRD §4.59. While he had essentially a normal C&P exam, he had multiple examinations documenting painful motion in these records and the VA acknowledged that while the CI did have occasional ‘good days’ he did have significant knee problems.

|  |  |  |  |
| --- | --- | --- | --- |
| **Knee****Movement** | **Normal ROM** | **ROM PEB Addendum****20040629** | **ROM VA C&P** **20040909** |
| Right Flex | 0 - 140 | 125 | 0 – 140No decrease with 10 reps secondary to pain, instability or fatigability |
| Right Ext | 0 - 0 | 0 | 0 |
| Left Flex | 0 - 140 | 125 | 0 – 140No decrease with 10 reps secondary to pain, instability or fatigability |
| Left Ext | 0 - 0 | 0 | 0 |

The CI had osteocartilaginous degeneration of the hips as well as his knees. Orthopedics characterized his hip dysplasia as mild and although it was becoming more symptomatic it was not mechanically conducive to alignment surgery. Hip examination revealed limited ROM as documented in the chart below. The limitations of flexion did not reach the minimal compensable level of 45 degrees on either side. The Navy PEB rated both hips under VASRD 5003 based on the presence of x-ray findings in two major joints and lack of a compensable level of limited range of motion (ROM) of either hip. At a pre-separation examination the VA noted a greater limitation of ROM which increased to the compensable level after repeated motion. The VA therefore rated each hip separately under VASRD 5252. A 20% rating for each hip was assigned. However, a 20% rating requires flexion limited to 30 degrees. The right hip was limited to 30 degrees after repeated motion but the left hip was only limited to 40 degrees. Flexion limited to 40 degrees meets the criteria for a 10% rating.

|  |  |  |  |
| --- | --- | --- | --- |
| **Hip****Movement** | **Normal ROM** | **NARSUM Addendum 20040629** | **VA C&P****20040909****(1mo prior to separation)** |
| Right Flex(≤45 compensable) | 0 - 125 | 0 (neutral) - 100 | 0 – 60 stop at pain0 - 30 after 10 repetitions |
| Right extension(≤5 compensable) | 0 |  | 0 – 10 stop at pain |
| Right Abduction(≤10 compensable) | 0 - 45 | 45 | 0 – 30  |
| Right Adduction(cannot cross legs) |  |  | 0-25 |
| Right External Rotation(cannot toe out >15°) |  |  | 30 |
| Right Internal Rotation |  |  | 40 |
|  |  |  |  |
| Left Flex(≤45 compensable) | 0 - 125 | 0 (neutral) - 100 | 0 – 50 stop at pain0 - 40 after 10 repetitions  |
| Left extension(≤5 compensable) | 0 |  | 0 – 10 stop at pain |
| Left Abduction(≤10 compensable) | 0 - 45 | 45 | 0 – 30 |
| Left Adduction(cannot cross legs) |  |  | 0-25 |
| Left External Rotation(cannot toe out >15°) |  |  | 40 |
| Left Internal Rotation |  |  | 40 |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at a combined 30% with Bilateral Hip Dysplasia 5003 at 10%, Osteoarthritis with Specifically Chondral Degeneration of the Patellofemoral Joint and Severe Chondromalacia Patella and Bipolar Lesions in the Right Knee 5010-5260 at 10%, and Osteoarthritis with Specifically Chondral Degeneration of the Patellofemoral Joint and Mild Chondromalacia Patella in the Left Knee 5010-5260 at 10% and a bilateral factor of 1.9.

The Navy PEB determined that the CI’s bilateral hip dysplasia was the only unfitting condition and rated both hips together under 5003 based on the presence of x-ray findings in two major joints and lack of a compensable level of limited range of motion (ROM) of either hip. The CI’s bilateral knee problems and polyarthralgias were not considered unfitting and were classified as contributing conditions. Therefore none of these conditions were rated. This Board independently reviewed this case and determined the CI’s bilateral knee conditions were unfitting because they precluded him from performing the duties of his rank and MOS. Information from the NARSUM completed by the CI’s treating rheumatologist and from the Commander’s letter was used to make this determination. This Board determined there was not sufficient evidence to classify the bilateral hip dysplasia as unfitting.

In accordance with DoDI 6040.44 Lead DoD Component for the Physical Disability Board of Review (PDBR) Enclosure 3 paragraph 4e, this Board may not recommend a combined disability rating that is lower than the previously assigned combined disability rating. Therefore, the Board opined the best course of action in this case is to make no modification to the previously rated hip conditions and add the right and left knee conditions as unfitting. There is limited ROM of each knee due to pain. However, the limitation does not meet the minimal compensable level (45 degrees of flexion or 10 degrees of extension) so the right and left knee conditions are each appropriately rated at 10% for painful motion under VASRD paragraph §4.59.

The Board also examined polyarthralgias including bilateral elbow and hand pain, asthma/chronic bronchitis, and anxiety/adjustment disorder and did not find any of these conditions to be unfitting. Therefore, no ratings can be applied. The other diagnoses, scar and hemorrhoid, rated by the VA are not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request the Board of Correction for Naval Records (BCNR) consider adding these conditions as unfitting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of the CI’s prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| BILATERAL HIP DYSPLASIA | 5003 | 10% |
| OSTEOARTHRITIS WITH SPECIFICALLY CHONDRAL DEGENERATION OF THE PATELLOFEMORAL JOINT AND SEVERE CHONDROMALACIA PATELLA AND BIPOLAR LESIONS IN THE RIGHT KNEE  | 5010-5260 | 10% |
| OSTEOARTHRITIS WITH SPECIFICALLY CHONDRAL DEGENERATION OF THE PATELLOFEMORAL JOINT AND MILD CHONDROMALACIA PATELLA IN THE LEFT KNEE | 5010-5260 | 10% |
| Combined | 30% |

With Bilateral Factor of 1.9 for 5010-5260

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090427, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

 RECOMMENDATION ICO XXXXX, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 9 Dec 09 w/encl

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. The subject member’s official records are to be corrected to reflect the following disposition:

 a. Separation from the naval service due to physical disability rated at 30% (increased from 10%) with placement on the Permanent Disability Retired List effective the date of discharge.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)