RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900432 SEPARATION DATE: 20011206

BOARD DATE: 20110215

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-4 (SK3, Storekeeper) medically separated from the Navy in 2001. The medical basis for the separation was bilateral knee pain. She developed anterior pain in both her knees shortly after entering service, made worse with prolonged bending, running and climbing stairs. Treatment included physical therapy. Despite light duty status and a limited duty (LIMDU) profile she did not respond adequately to perform within her military occupational specialty or participate in a physical fitness test, and was referred to a Medical Evaluation Board (MEB). The bilateral knee pain condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions appeared on the MEB’s submission. The informal PEB adjudicated the knee pain condition as unfitting, rated 10% IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: ‘“I was found unfit to continue my tour of duty b/c of the issues with my knees. Now I’m stuck with really bad knees and a disability that’s not just..” She elaborates further her evaluation, treatment, and physical challenges both before and after separation due to her knee condition. No conditions other than the knee condition are contended or noted in this application. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20010924** | | | **VA (4 Mo. after Separation) – All Effective 20011207** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Patellofemoral Pain Syndrome (PFS) | 5299-5003 | 10% | PFS Left Knee | 5299-5260 | 10% | 20020405 |
| PFS Right Knee | 5299-5260 | 10% | 20020405 |
| ↓No Additional MEB Entries↓ | | | Gastrointestinal Condition | 7319-7346 | 10% | 20020405 |
| NSC X 5 | | | 20020405 |
| **TOTAL Combined: 10%** | | | **TOTAL Combined: 30%** | | | |

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that her service-incurred condition has had on her quality of life. It is a fact, however, that 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. This role and authority is granted by Congress to the Veterans Administration.

Knee Condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Although nine months apart, the VA Compensation & Pension (C&P) examination and the MEB examination did not differ significantly in respect to ratable parameters. Neither exam documented any mechanical instability of the joint. The MEB exam documented some tenderness to compression of the patellofemoral tendon and atrophy of the quadriceps which connote functional impairment, but are not rating criteria. The ROM findings for the two exams are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| Knee | Separation Date: | |
| Goniometric ROM | PT ~ 5 Mos Pre Sep | VA C&P ~ 5 Mos After Sep |
| Flexion 0-140⁰ normal | 140⁰ | 135⁰ |
| Extension 0⁰ normal | -10⁰ | 0⁰ |
| §4.71a Rating\* | 10% | 10% |

\* Conceding §4.59 (painful motion)

The PEB combined the left and right knee conditions as a single unfitting condition, coded analogously to 5003 and rated 10%. The Board notes that this “bundling,” the combining of conditions under the single analogous 5003 code when satisfactory evidence of painful motion is present, is inconsistent with VASRD rating requirements. The Board must apply separate codes and ratings for each joint in its recommendation, since compensable ratings for each knee condition are achieved IAW VASRD §4.71a. This is consistent as well with the VA rating decision. The VA rated the patellofemoral syndrome of each knee separately, coded analogously to limitation of flexion, but applied §4.59 to yield a compensable rating. ROM measurements on both the MEB and VA exams were in the 0% compensable range for each knee for compensation, although evidence supporting the minimum compensable ratings IAW §4.59 (as cited in the chart) can be readily drawn from the records. There is no viable approach to a higher rating for either knee separately which is countenanced by the VASRD. All evidence considered, the Board recommends that each knee be separately adjudicated as unfitting, coded 5299-5260 and rated 10% each IAW VASRD §4.71a.

Remaining Conditions. No conditions were identified in the DES documents other than those addressed above. One other condition, irritable bowel syndrome (IBS)/gastroesophageal reflux disease (GERD), was service connected with a compensable rating by the VA within 12 months of separation. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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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 Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral knee condition, 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%; both IAW VASRD §4.71a. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Patellofemoral Syndrome Right Knee | | 5299-5260 | 10% |
| Patellofemoral Syndrome Left Knee | | 5299-5260 | 10% |
| **COMBINED (Incorporating BLF)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090607, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX, FORMER USN, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 25 Feb 11

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

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 20 percent (increased from 10 percent) effective 1 December 2006.

3. Please ensure all necessary actions are taken to implement this decision and the subject member is notified once those actions are completed.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)