RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900497 BOARD DATE: 20100804

SEPARATION DATE: 20080430

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SUMMARY OF CASE: This covered individual (CI) was an active duty E-5/SGT (3533/Logistics Vehicle System Operator) medically separated from the Marine Corps in 2008 after more than 7 years of service. The medical basis for the separation was Closed Right Femur Fracture Status Post Retrograde Intramedullary Nailing of the Femur & Chronic Right Medial Malleolar Avulsion Fracture. Appropriate therapy failed to alleviate this condition and the CI was referred to the Physical Evaluation Board (PEB). An Informal PEB determined he was fit to continue on active duty in October 2007. The decision was reconsidered in November 2007 but the determination was not changed. However, a second reconsideration was done in March 2008 and the PEB then determined he was unfit for continued Naval service. He was separated with a 10% disability rating determined by the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: ‘Due to the severity of my injury at the time of my rating I couldn’t run to complete a Marine Corps PFT. I only had 50% of strength in my leg and numbness from my knee down to my ankle, among other things. To this day almost 4 years after my injury my legs remains the same. No improvement at all. I received 40% from the V.A. also due to the limitations I now have that would not allow me to continue my service as a Marine and everyday life. I feel I rate more than 10%. More is documented in my military & VA medical records.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080304** | | | **VA (5 mos Prior to Separation) – All Effective 20080501** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Closed Right Femur Fracture status post Retrograde Intramedullary Nailing of the Femur | 5099-5003 | 10% | Right Femur Fracture Requiring Open Reduction Internal Fixation, Retrograde Insertion of Rod, and Residual Scars | 5314-5255 | 20% | 20071120 |
| Incomplete Paralysis of Musculocutaneous (superficial peroneal) Nerve | 8522 | 0% | 20071120 |
| Chronic Right Medial Malleolar Avulsion Fracture | Cat II | | Right Medial Malleolar Avulsion Fracture | 5099-5271 | 10% | 20071120 |
| Right Medial Malleolar Scar | 7804 | 10% | 20071120 |
|  | Not in DES | | Umbilical Hernia | 7399-7339 | 0% | 20071120 |
| **TOTAL Combined: 10%** | | | **Total Combined 40%** | | | |

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ANALYSIS SUMMARY:

Right Femur and Knee: Limited Duty (LIMDU) 20060825, no running, rifle range, marching, limited use of right extremity, group physical training/physical fitness test. The CI was the victim of a hit and run by a vehicle on 20051223. He was a pedestrian and suffered a lower right femur fracture and an avulsion fracture of the right medial ankle. He required retrograde intramedullary rodding with four locking screws, three distal and one proximal. The distal locking screws were subsequently removed in August 2006. He received physical therapy after the surgery and appeared to be healing well. A medical board was done in August 2006 and he was found fit for full duty in November 2006. However, after prolonged physical therapy for his right hip, thigh, knee, and ankle he was unable to progress to full activity and was referred for another medical board. He could only ambulate approximately one and a half to two miles before he would develop significant pain in his right distal thigh and easy fatiguability. He was unable to run farther than one to one and a half miles for the same reason of right thigh pain with occasional right ankle pain. He had reached maximal medical benefit and was not capable of full duty. The VA Compensation and Pension (C&P) exam noted he was dysfunctional per the right lower extremity for high impact work but should be able to carry out most any other type of work. He was currently doing truck driving military vehicles successfully.

Both the Medical Evaluation Board (MEB) narrative summary (NARSUM) and the VA C&P examination were completed prior to the CI’s separation from service and both documented similar findings. The CI continued to have a slightly decreased range of motion (ROM) examination of the right knee at the non-compensable level. He had an antalgic gait but his knee was not unstable. With repeated movements his pain on motion increased but there was no further decrease in ROM or change in strength or coordination. His right knee had normal strength but lacked endurance and tired easily. He had continued tenderness to palpation in the area of the distal thigh overlying the fracture site and a moderate amount of muscle quadriceps atrophy at this same area with a small area of dimpling in the area of the vastus medialis. He had normal strength and deep tendon reflexes in both lower extremities. He had decreased sensation to light touch and pin prick in the right lower extremity. This area was distal to the anterior surgical incision on the medial side of the right knee and extended approximately 15 centimeters distally on the front of the leg. The VA C&P examination also documented crepitus with extension and flexion of the right knee and a positive patella femoral grind. The Apley, McMurray, anterior and posterior drawer, and varus and valgus stress tests were all negative. The VA diagnoses included: Focal atrophy of the vastus medialis muscle, minimal; right femur fracture requiring open reduction internal fixation, retrograde insertion of rod; anesthesia of strip below the knee medial aspect from the medial knee to the medial ankle, approximately two inches wide, decreased pin prick and touch; and Strain right knee secondary to the motor vehicle accident with resultant easy fatigability and fatigue and decreased range of motion plus minimal pain (Patellofemoral Pain Syndrome post trauma).

|  |  |  |  |
| --- | --- | --- | --- |
| Knee Movement | Normal ROM | ROM Mil  20070830 | ROM VA  20071120 |
| Right Flexion | 0 - 140 | 120 | 130 |
| Right Extension | 0 - 0 | 0 | 0 |
| Left Flexion | 0 - 140 | 130 | 140 |
| Left Extension | 0 - 0 | 0 | 0 |

The VA rating combined the painful motion of the knee with the muscle condition of lack of endurance and easy fatiguability and used a hyphenated code comprised of 5255 Femur, Impairment of and 5314 Group XIV Muscle Injury. A 20% rating was applied for a moderate knee disability with muscle atrophy, crepitus, positive patella femoral grind, pain, fatigability, and lack of endurance.

Right Ankle Fracture and Scars: While some of the limitations delineated above could have also been imposed secondary to this condition, the LIMDU did not mention this condition. The condition was present and had been diagnosed before the LIMDU was written. Therefore no duty restrictions can be attributed to this condition. The condition was not specifically mentioned in the Commander’s letter. This letter also stated the CI was not working out of his specialty. There is no evidence this condition interfered with performance of any required duties and no duty restrictions can be attributed to it.

Other Conditions: Incomplete paralysis of musculocutaneous (superficial peroneal) nerve, chronic right medial malleolar avulsion fracture and right medial malleolar scar. There is no evidence this condition interfered with performance of any required duties and no duty restrictions can be attributed to it.

Other Conditions Not in the Disability Evaluation System (DES):

Umbilical Hernia

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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. After careful consideration of all available information the Board determined by simple majority that the CI’s condition is appropriately rated as 5099-5003 Closed Right Femur Fracture status post Retrograde Intramedullary Nailing of the Femur with 10% disability. The CI had a femur fracture that required an Open Reduction Internal Fixation (ORIF). After prolonged physical therapy he remained unable to perform full duty and was not able to walk or run more than one to one and a half miles. He continued to have moderate knee disability with painful motion, muscle atrophy, crepitus, positive patella femoral grind, pain, fatigability, and lack of endurance. He was able to function as a truck driver but would be not be able to perform certain types of employment such as law enforcement, firefighting and/or construction. VASRD §4.59 Painful Motion states ‘the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint.’ Therefore a 10% rating is warranted for painful motion. The single voter for dissent (who recommended rating 5255-5314 Closed Right Femur Fracture status post Retrograde Intramedullary Nailing of the Femur at 20%) did not elect to submit a minority opinion.

The Board also considered the conditions of incomplete paralysis of musculocutaneous (superficial peroneal) nerve, chronic right medial malleolar avulsion fracture and right medial malleolar scar and unanimously determined these conditions were not unfitting at the time of separation from service and therefore no disability rating is applied.

The other condition rated by the VA (Umbilical Hernia) was not mentioned in the Disability Evaluation System package and is therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090810, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL

OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 10 Aug 10

I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)) that Mr. XXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)