RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900502 BOARD DATE: 20100623

SEPARATION DATE: 20090226

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

SUMMARY OF CASE: This covered individual (CI) was a LCpl/E3 (Small Arms Repairer/Technician) medically separated from the Marine Corps 2009 after 1 year of service. The medical basis for the separation was Patellofemoral Syndrome, Bilateral Knees. The Patellofemoral Syndrome, Bilateral Knees was determined to be medically unacceptable. CI was referred to the Physical Evaluation Board (PEB), found unfit for continued naval service and separated at 0% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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

CI CONTENTION: “Received 40% rating from VA for bi-lateral knee condition”

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

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service** | **VA (5 Months After Separation)** |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Patellofemoral Syndrome, Bilateral Knees |  5099-5003 | 0% | 20081211 | Patellofemoral Syndrome, Left Knee | 5261 | 20% | 20090721 | 20090331 |
| Patellofemoral Syndrome, Right Knee | 5261 | 20% | 20090721 | 20090331 |
| Chronic Bilateral Anterior Knee Pain | CAT II |  | 20081211 |
| No PEB Entry |  | Not in DES Package | Right Shoulder Strain Associated with Patellofemoral Syndrome, Right Knee | 5024 | 10% | 20090721 | 20090331 |
| No PEB Entry |  | Not in DES Package | Residuals, Traumatic Injury, Thoracolumbar Associated with Patellofemoral Syndrome, Right Knee | 5237 | 10% | 20090721 | 20090331 |
| No PEB Entry |  | Not in DES Package | Right Hip and Groin Strain Associated with Patellofemoral Syndrome, Right Knee | 5251 | 10% | 20090721 | 20090331 |
| **TOTAL Combined: 0%** | **TOTAL Combined (Includes Non-PEB Conditions):** **60% from 20090331 Bilateral Factor of 4.2 for 5251, 5261, 5261** |

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

ANALYSIS SUMMARY:

Bilateral Knees

The CI was found to be unfit as a result of bilateral patellofemoral syndrome. He had chronic bilateral anterior knee pain. There was no inciting incident but the pain started during basic training when he was running seven miles a day. His pain progressed to the point where he could not run without significant discomfort. His symptoms did not respond to appropriate treatment of non-steroidal anti-inflammatory medications and physical therapy. He was able to perform the duties of his military occupation specialty (MOS) in garrison but not in a deployed environment and he was not able to perform fitness testing. Range-of-motion (ROM) examination of both knees is noted in the chart below.

He was referred to the Navy PEB and found to be unfit. The PEB rated both knees together analogous to 5003 Arthritis, degenerative. Full ROM was reported for both knees in the narrative summary (NARSUM) but does not appear to have been measured with a goniometer. It is unclear if these are active or passive movements and there is no mention of the degree at which pain occurred. There is no mention of whether or not pain was present during the examination. The Medical Evaluation Board (MEB) History and Physical reports a ROM of 0-140 degrees for both knees but there is no mention of whether or not pain was present at any degree of movement and it is not clear a goniometer was used.

The VASRD §4.59 Painful motion recognizes painful motion as productive of disability and states actually painful, unstable or malaligned joints, due to healed injury as entitled to at least the minimum compensable rating for the joint. The VA Compensation and Pension (C&P) evaluation done five months after the CI separated from service was a more complete examination. It included measurement of flexion and extension on active and passive motion and with repeated motion. In both knees, flexion was limited by 5 degrees by pain and extension was limited by 15 degrees by pain on both active and passive motion. Repeated motion did not increase pain or further decrease the ROM. Repeated motion did not result in any additional functional impairment beyond what was noted with the initial ROM testing.

Either code 5003 or 5261 could be used for this CI’s bilateral patellofemoral syndrome. However whenever two evaluations can be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. The 5261 code more accurately describes the CI’s functional limitation and it should be applied. The CI’s limitation of extension is above the minimal compensable level and the code can be used directly. It is frequently used as an analogous code for patellofemoral syndrome. A 20% rating is warranted for each knee as extension is limited by 15 degrees in each knee.

|  |  |  |  |
| --- | --- | --- | --- |
| KneeMovement | Normal ROM | NARSUM 20080915 | C&P 200907215 months after separation |
| Right Flex | 0 - 140 | Full ROM, but not measured | 15 to 135 |
| Right Ext | 0 - 0 | Full ROM, but not measured | Limited by 15 degrees |
|  |  | -Negative: Lachman, pivot shift, anterior and posterior drawer, dial test bilaterally-No mention of degree where pain occurred-Normal X-rays | -Limited by pain- No indication of additional functional impairment during flare-up or secondary to repetitive- Strength was slightly reduced a 4 out of 5. -X-rays are within normal limits. |
| Left Flex | 0 - 140 | Full ROM, but not measured | 15 to 135 |
| Left Ext | 0 - 0 | Full ROM, but not measured | Limited by 15 degrees |
|  |  | -Negative: Lachman, pivot shift, anterior and posterior drawer, dial test bilaterally-No mention of degree where pain occurred-Normal X-rays | -Limited by pain- No indication of additional functional impairment during flare-up or secondary to repetitive- Strength was normal at 5 out of 5. -X-rays are within normal limits. |

Other Conditions not in Disability Evaluation System (DES) pacakage: Right Shoulder Strain Associated with Patellofemoral Syndrome, Right Knee and Residuals, Traumatic Injury, Thoracolumbar Associated with Patellofemoral Syndrome, Right Knee

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

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 majority vote that the CI’s condition is most appropriately rated at a combined 40% with 20% for 5261 Patellofemoral Syndrome, Right Knee; 20% for 5261 Patellofemoral Syndrome, Left Knee; and a bilateral factor of 3.6.The CI had bilateral knees each had fifteen degrees of extension limited by pain and this warrants a 20% rating under VASRD 5261 for each knee.

The single voter for dissent (who recommended a combined 20% with 10% for 5099-5003 Patellofemoral Syndrome, Right Knee; 10% for 5099-5003 Patellofemoral Syndrome, Left Knee; and a bilateral factor of 1.9.) submitted the addended minority opinion.

The other diagnoses rated by the VA (Right Shoulder Strain Associated with Patellofemoral Syndrome, Right Knee and Residuals, Traumatic Injury, Thoracolumbar Associated with Patellofemoral Syndrome, Right Knee) were not mentioned in the Disability Evaluation System package and are 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.

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

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 his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Patellofemoral Syndrome, Left Knee | 5261 | 20% |
| Patellofemoral Syndrome, Right Knee | 5261 | 20% |
| **COMBINED (Incorporating BLF of 3.6)** | **40%** |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090818, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

Minority Opinion 09-502

The CI suffers from bilateral knee pain, which started at Boot Camp, and was diagnosed as Patellofemoral Syndrome. There was no specific trauma, and no X-ray evidence of abnormalities. The MEB Physical Exam conducted on 20081124 showed Full Range of Motion (ROM) bilaterally from 0-140 degrees with no abnormalities, and there is no reason to discount this exam as an accurate representation of the CI’s condition at the time of separation. Four months earlier on 20080723 his left knee ROM was 140 degrees (with pain), and right knee ROM was at 140 degrees. On 20080611, his right knee had Full ROM from 0-145 degrees, and on 20071023 these findings were reproduced.

According to the Navy PEB notes (from the Line Officers), it was a close call as to whether the condition was even unfitting, because he was able to do his job and most garrison duties. The Non Medical Assessment (NMA) says that CI’s job performance is not affected by the diagnosis, and that his limitation was that he was unable to run a physical fitness test. During this period, there were never any measured limitations to his leg extension. The first and only documentation of any significant ROM impairment was at the VA rating examination done five months after separation, where his left and right flexion were from 15 degrees to 135 degrees, and extension of both knees was limited by 15 degrees.

There was no apparent new injury reported, or means to explain the development of the ROM impairment displayed at the VA exam. The diagnosis of Patellofemoral Syndrome is not normally associated with a loss of range-of-motion in any plane, especially extension. A chronic, stable and common joint condition such as this one would not be expected to deteriorate to this degree, especially over the course of only several months. Resolving this issue in favor of the CI entails a conclusion that the VA exam reflected a ‘bad day’, representative of an exacerbation, not of baseline impairment. The Board’s decisions should be based on the preponderance of the evidence, not on a single data point that favors the highest rating.

I do not believe that the majority opinion is consistent with the preponderance of the evidence, and that 40% is an accurate or reasonable depiction of the disability in this case, based on the factors elaborated above and on the fact that the PEB considered it close to not unfitting. I respectfully submit that the most appropriate recommendation is reflected in the chart below.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Patellofemoral Syndrome, Left Knee | 5099-5003 | 10% |
| Patellofemoral Syndrome, Right Knee | 5099-5003 | 10% |
| **COMBINED (Incorporating BLF of 1.9)** | **20%** |

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR undtd ltr

1. I have reviewed the subject case pursuant to reference (a) and considered 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 20 percent (increased from (10 percent) effective 30 March 2009.

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)