RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900514 BOARD DATE: 20100630

SEPARATION DATE: 20050415

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SUMMARY OF CASE: This covered individual (CI) was a Private First Class (from DD Form 294) Administrative Clerk medically separated from the Marine Corps in 2005 after 2 years, 7 months of service. The medical basis for the separation was right knee pain. The CI was referred to the PEB, found unfit for the condition, determined unfit for continued military service and separated at 10% disability using 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: ‘When I first got out in April 2005 I was awarded 20% for my knee. In 2007 they reduced it to 10% when my knee got worse not better. My leg is limited to at least 30 degrees flexion, or an extension of 15 degrees and is also painful to walk on. There is also moderate subluxation and lateral instability of the knee. I go to physical therapy for leg strengthening.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (3 Mo. after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Right Knee Anterior Cruciate Ligament Insufficiency with Lateral Meniscus Tear and Lateral Femoral Condyle Bone Bruise | 5099-5003 | 10% | 20050119 | Right Knee Medial Meniscal Tear with Medial Meniscal Capsular Injury | 5260 | 30%  then  20% | 20050712 | 20050416  then  20050701 |
|  |  | MEB H&P Diagnosis | | Dysthymic Disorder with an Anxiety Disorder | 9433 | 30% | 20050714 | 20050416 |
|  |  | Not in DES | | Petallarfemoral Syndrome, Left Knee with Medial  Compartment Narrowing Associated with Right Knee  Medial Meniscal Tear With Medial Meniscal Capsular  Injury | 5003 | 10% | 20050712 | 20050416 |
|  |  | Not in DES | | Tinnitus | 6260 | 10% | 20050715 | 20050416 |
|  |  | Not in DES | | Low Back Strain Associated with Right Knee Medial  Meniscal Tear with Medial Meniscal Capsular Injury | 5237 | 0% | 20050712 | 20050416 |
|  |  | Not in DES | | Acid Reflux Syndrome | 7346 | 0% | 20050712 | 20050416 |
|  |  |  |  | 3 other Conditions |  | NSC |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **60% from 20050416** | | | | |

ANALYSIS SUMMARY:

Right Knee Pain

The CI injured his right knee while skateboarding 20040205 and was diagnosed with anterior cruciate ligament (ACL) strain and medial meniscus tear. He underwent arthroscopy for surgical debridement of his meniscal tear. He subsequently re-injured his right knee after jumping off four stairs approximately one month after the arthroscopy. Physical examination and Magnetic Resonance Imaging (MRIs) after this re-injury were consistent with a complete right knee ACL tear, lateral meniscal tear, and lateral femoral condyle bone bruise. He declined surgical repair of these new injuries and this was determined to be reasonable. He was treated with an ACL brace that provided him stability with activity.

Approximately one month after the CI separated from service he had surgery (20050518) to correct his ACL tear and lateral meniscus tear in his right knee. His initial C&P exam was done two months later and this close proximity to the date of surgery may account for the decreased range of motion (ROM) documented on that exam. No other exam, before or after the 2005 surgery documents a ROM decrease to this level. All other exams document only slightly decreased ROM. The exam closest to the time of separation was performed by a civilian doctor from St. Croix Orthopaedics six days after the date of separation. This exam documented full ROM and did not mention if pain was present or not during movement. Evidence of the ACL and meniscal tears was present on exam but there was no swelling, lateral instability, or abnormal gait.

While the CI did have frequent pain, he had only intermittent episodes of swelling, and no evidence of any episodes of ‘locking’. Therefore the VASRD code 5258 is not warranted but code 5259 can be applied. If pain is used to support a rating under 5259, we cannot apply a separate rating for painful motion as this would be pyramiding. A separate code for the instability secondary to the ACL tear should also be applied. There was never any lateral instability noted on examination, only the 2+ Lachman’s and positive anterior drawer test which show anterior instability. Code 5257 should therefore be applied analogously.

(Separation Date 20050415)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Knee  Movement | Normal ROM | 20040621 PT | 20041108  (same as IPEB JDETS notes) | 20050421  (Civilian MD; did surgery 20050518) | ROM VA (PAIN)  20050712  (2 months after surgery) | ROM VA  (Pain)  20070426 |
| Right Flex | 0 - 140 | 120 | 130 | 0-140 | 0-75 (35) | 0-110 (95) |
| Right Ext | 0 - 0 | 0 | 0 | 0 |  | 0 |
| Left Flex | 0 - 140 |  |  | 140 | 135 (stated 0-135 was normal) |  |
| Left Ext | 0 - 0 |  |  | 0 | 0 |  |
| Mil & VA eval noted |  | Pain at full flexion; motor 5/5 | Pain increases at end ranges of motion; strength Quad 4/5, Hamstrings 4-/5; Lachman/anterior drawer +; Gait unremarkable; medial joint line tenderness; no swelling | No effusion, no instability to varus or valgus stressing at 0 and 30 degrees; Lachman 2+; Moderate medial joint line tenderness; no limp; was wearing ACL brace; McMurray’s caused some click and discomfort | Negative Lachman’s; pain with strength testing; no swelling; moderately tender to palpation laterally; no ligamentous instability | Right knee brace daily; Antalgic gait; Anterior drawer negative; Lachman’s positive for moderately increased laxity compared to left knee; Normal MCL, LCL, McMurray’s; normal strength flexion and extension; No additional disability with repeated motion |

Mental Health

No mental health condition was addressed by the Navy Physical Evaluation Board (PEB).

Service Treatment records revealed the CI was treated in 2003 for adjustment disorder related to work issues, in 2004 for anxiety disorder not otherwise stated with anxiety related to controlling of aircraft, and in 2005 for Adjustment Disorder with Anxiety and Depressed mood. A positive response to Paxil was noted in February 2005 along with ability to tolerate medication. The Commander’s letter only mentioned physical reasons for not being able to perform required duties. There was no profile with any duty restrictions related to mental illness.

No evidence this condition was unfitting at the time of separation from service.

Other Conditions Not in Disability Evaluation System (DES)

Patellofemoral Syndrome, Left Knee with Medial Compartment Narrowing; Tinnitus; Low Back Strain; and Acid Reflux Syndrome

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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 records the Board unanimously determined that the CI’s right knee condition is most appropriately rated at a combined 20% with 10% for 5259 Right Knee Medial and Lateral Meniscal Tear, s/p Repair of Medial Meniscal Tear and 10% for 5299-5257 Right Knee ACL Tear.

The CI had a right knee medial meniscal tear that had been repaired at arthroscopy and a subsequent right knee lateral meniscal tear that had not been repaired at the time of separation. He had swelling and pain but no evidence of frequent episodes of locking. Therefore a rating of 10% for VASRD 5259 is warranted. The CI also had a right knee ACL tear that resulted in instability and the need for a brace to restore stability. There was no lateral instability. This is considered mild instability and warrants a 10% rating under VASRD 5299-5257. As pain is used to support the rating for meniscal injury, it cannot also be used to support a rating for painful motion under VASRD 5260 because this would be pyramiding. Therefore no additional code can be applied.

The Board also considered Dysthymic Disorder with an Anxiety Disorder and unanimously determined that this condition was not unfitting at the time of separation from service and therefore no rating percentage is applied. There is no evidence that this condition prevented performance of any required duties and there were no duty restrictions that can be attributed to this condition.

The other diagnoses rated by the Veterans Administration (VA) (Patellofemoral Syndrome, Left Knee with Medial Compartment Narrowing; Tinnitus; Low Back Strain; and Acid Reflux Syndrome) were not mentioned in the DES package and are therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Military Naval Records (BCNR) to consider adding these conditions as unfitting.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Right Knee Medial and Lateral Meniscal Tear, s/p Repair of Medial Meniscal Tear | 5259 | 10% |
| Right Knee Anterior Cruciate Ligament Tear | 5299-5257 | 10% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090827, 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 COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, EX-USMC, XXX XX XXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 8 Jul 10

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 20 percent (increased from 10 percent) effective 15 April 2005.

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)