RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD0900528 BOARD DATE: 20100825

SEPARATION DATE: 20020731

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SUMMARY OF CASE: This covered individual (CI) was a Corporal Infantry Rifleman medically separated from the Marine Corps in 2002 after approximately two and a half years of service. The medical basis for the separation was Degenerative Joint Disease Changes to Bilateral Hips. The CI was referred to the Physical Evaluation Board (PEB), found unfit for the condition, determined unfit for continued military service and separated at 10% combined disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navaland Department of Defense regulations.

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CI CONTENTION: The CI states: ‘My disability rating from the VA was 50% upon separation, and is currently 70%.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | | | **VA (1 Month Pre-Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | | **Date** | | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Degenerative Joint Disease Changes to Bilateral Hips | 5299-5003 | 10% | | 20020614 | | Residuals, Left Hip De-generative Changes with Subchondral Sclerosis in the Acetabula, Joint Space Narrowing and Osteophyte Changes | 5003-5255 | 10% | 20020627 | 20020801 |
| Left Hip |  | 10% | |
| Right Hip |  | 0% | | Residuals, Right Hip Degenerative Changes with Subchondral Sclerosis in the Acetabula, Joint Space Narrowing and Osteophyte Changes | 5003-5255 | 10% | 20020627 | 20020801 |
| Ossicle Over the Left Acetabular Lip | **Category II:** Conditions that contribute to the unfitting condition(s): | | | | |
| Asthma |  | | NARSUM | | | Obstructive Pulmonary Disease (Claimed as Asthma) | 6604 | 10%  30% | 20020627  20080311 | 20020801  20040513 |
|  |  | | Not in DES | | | Tinnitus | 6260- | 10% | 20020708 | 20020801 |
|  |  | | Not in DES | | | Folliculitis | 7814 | 10%  30% | 20020627  20080116 | 20020801  20080116 |
|  |  | | Not in DES | | | Lumbar Spine Retrolisthesis of L5 | 5299-5295 | 10% | 20020627 | 20020801 |
|  |  | | MEB H&P | | | Bilateral Hearing Loss | 6100 | 0% | 20020708 | 20020801 |
|  |  | |  | |  | 2 other conditions | NSC |  |  |  |
| **TOTAL Combined: 10% (Bilateral factor 1)** | | | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **50% from 20020801 (BL 1.9 for 5255, 5255)**  **60% from 20040513 (BL 1.9 for 5255, 5255)**  **70% from 20080116 (BL 1.9 for 5255, 5255)** | | | | |

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ANALYSIS SUMMARY:

Degenerative Joint Disease Changes to Bilateral Hips

While on deployment to Kosovo in 2001, the CI woke up one night after a fast run with severe pain in both hips. The pain was more severe on the left and while it improved somewhat with nonsteroidal anti-inflammatory medications it never resolved. At times the pain would increase and he required narcotic pain medication. Magnetic resonance imaging (MRI) showed diffuse degenerative changes to both femoral heads and ossicle over the left acetabular lip. The CI was limited to no running, no humping, no jumping and no squatting or duck walks. He could stand for regular formations but could not perform physical fitness testing and was not deployable. No further treatment other than hip replacement was available. Hip replacement surgery was delayed because of his age. Hip ranges of motion (ROM) measurements are in the chart below.

Separation Date 20020801

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Movement  Hips | Normal ROM | ROM PT  20020123 | | ROM Mil  20020403 | | ROM VA  20020627 | |
| Right | Left | Right | Left | Right | Left |
| Flex | 0 - 125 | 110 | 110 | 135 | 70 | 0-90 | 0-100 |
| Extension | 0-30 |  |  |  |  | 0-15 | 0-20 |
| Adduction | 0-25 |  |  |  |  | 0-15 | 0-20 |
| Abduction | 0 - 45 | 40 | 20 | 45 | 30 | 0-30 | 0-30 |
| External Rotation | 0-60 | normal | normal | 45 | 30 | 0-30 | 0-45 |
| Internal Rotation | 0-40 | 10 | Neutral w/pain | 20 | 0 | 0-20 | 0-20 |

The Navy rated the condition using VASRD 5299-5003 and the VA used 5003-5255. In accordance with the 2002 VASRD the rating is based on the limitation of the range of motion. The ROM limitations did not meet the minimal compensable level for the hip. However, the 2002 VASRD §4.59 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.’ The minimum compensable rating under 5003 or 5255 is 10%.

Other Conditions:

Asthma/Obstructive Pulmonary Disease and Bilateral Hearing Loss. There is no evidence these conditions were unfitting at the time of separation from service. Neither interfered with performance of required duties and no duty restrictions are attributed to either condition.

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

Tinnitus, Folliculitis, Lumbar Spine Retrolisthesis of L5, and Bilateral Hearing Loss

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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 unanimously determined that the CI’s hip condition is most appropriately rated at a combined 20% with 10% for each hip and a bilateral factor of 1.9. The CI’s bilateral hip degenerative joint disease resulted in limited range of motion of each hip joint at a level that did not meet the minimum compensable level. However, the 2002 VASRD §4.59 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.’ The minimum compensable rating under either 5003 or 5255 is 10%. Therefore each hip warrants a 10% rating.

The Board also considered the condition of Asthma/Obstructive Pulmonary Disease and Bilateral Hearing Loss and unanimously determined that these conditions were not unfitting at the time of separation from service and therefore no disability rating can be applied to either condition.

The other diagnoses rated by the VA (Tinnitus, Folliculitis, Lumbar Spine Retrolisthesis of L5) 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.

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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.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | | **VASRD CODE** | **RATING** |
| Degenerative Joint Disease Changes to Left Hip | | 5299-5003 | 10% |
| Degenerative Joint Disease Changes to Right Hip | | 5299-5003 | 10% |
| **COMBINED (Bilateral Factor 1.9)** | | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090831, 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

SUBJECT: Physical Disability Board of Review (PDBR) Recommendation ICO XXXXXX, Former USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 2 Sep 10

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (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 1 August 2002.

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)