RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900583 SEPARATION DATE: 20061215

BOARD DATE: 20110202

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Marine Corps Reserve E-6/SSgt (0621, Radio Operator) medically separated from service in 2006. The medical basis for the separation was Bicompartmental Osteoarthritis of the Left knee. The CI injured his knee in 1989 during a pinning ceremony when he suffered a forceful valgus injury to his left knee. He experienced weakness, stiffness, swelling, instability, locking, fatigability, and lack of endurance. He underwent Anterior Cruciate Ligament (ACL) reconstructive surgery in November 1989. The CI subsequently also underwent partial medial and lateral meniscectomies. On 19 Sep 81, the CI separated from active duty and entered the Marine Corps Reserve. In the years 2004 and 2005 the CI failed to meet the running time for his Physical Fitness Test (PFT). In April 2006, he underwent a left knee arthroscopy. The CI underwent multiple evaluations and treatments, including active/assistance treatment, icing, home exercises, passive and resistance, isotonic and isokinetic treatments and a knee brace. After surgery the CI noted chronic knee pain. He experienced stiffness and pain after sitting for approximately 20-30 minutes. Despite the extensive Physical therapy, the CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB found in view of the “osteoarthritis degeneration of the left knee joint” as interfering with duty and forwarded “Bicompartmental Osteoarthritis of the Left Knee, Failed ACL (Anterior Cruciate Ligament) Reconstruction in the Left Knee and Accompanying Anterolateral Rotatory Instability” to the Physical Evaluation Board (PEB) on the NAVMED 6100/1. No other conditions appeared on the MEB’s submission or were addressed in the narrative summary (NARSUM). The PEB adjudicated the Bicompartmental Osteoarthritis of the Left Knee condition as unfitting with disability code 5003 rated 10%, with application of the SECNAVINST 1850.4E and DoDI 1332.39 (E2.A1.5) respectively. The PEB adjudicated the “Accompanying Anterolateral Rotatory Instability” and “Failed ACL (Anterior Cruciate Ligament) Reconstruction in the Left Knee” as Category II (“Conditions that contribute to the unfitting condition”). The CI made no appeals, and was then medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I have not been able to obtain several jobs due to the fact that I can no longer run and my work background is in security and related jobs. I must also wear a brace, whenever I perform anything more than walking around my house.”

Rating Comparison Table is located on the next page.

RATING COMPARISON:

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| **Service IPEB – Dated 20061020** | **VA (3 Months after Separation) – All Effective 20061204** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bicompartmental Osteoarthritis of the Left Knee | 5299-5003 | 10% | Degenerative Joint Disease, Left Knee, Status Post Anterior Ligament Reconstruction | 5260-5010 | 10% | 20070330 |
| Accompanying Anterolateral Rotatory Instability | Cat II |
| Failed ACL (Anterior Cruciate Ligament) Reconstruction in the Left Knee | Cat II | Internal Derangement of Left Knee with Laxity, Status Post Anterior Cruciate Ligament Reconstruction | 5257 | 10% | 20070330 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%** |

ANALYSIS SUMMARY: The CI sustained the initial injury to his left knee during a pinning ceremony in 1989. As part of the ceremony, the CI was supposed to walk down a line of his fellow Marines and be kneed in the thigh; however the CI inadvertently was kneed in the left knee. The injury was determined to be a forceful valgus injury with symptoms of pain, weakness, stiffness, swelling, instability, locking, fatigability and lack of endurance. The CI subsequently underwent partial medial and lateral meniscectomies with ACL reconstruction. He was followed with Physical Therapy (PT) services. The CI then separated from active duty in 1991 and entered the Marine Corps Reserve. Throughout this time, the CI was seen at the VA for various left knee problems, given Non Steroidal Anti-Inflammatory Drugs (NSAIDS), advised to apply ice and use a knee immobilizer. He also had periods of limited duty (LIMDU) for this condition with restrictions of no running, side straddle hops, nor extended marching over 10 minutes. In 2004 the CI failed his PFT secondary to inadequate run time due to his left knee condition. The CI was seen in Physical Therapy on 26 Aug 04 after he felt a “pop” in his left knee during his PFT. Following his run, the CI stated that his knee became swollen and painful. He also complained that he had increased symptoms with deep bending, jumping and running. The PT noted that the exam did not show pain on palpation, but there was a positive Apley’s compression (suggests meniscal injury) and pain increased with full flexion in standing and supine position. The CI was prescribed a treatment course of strengthening, range of motion (ROM) and flexibility exercises. The CI continued to show good progress as noted in the 30 Oct 04 PT note “ROM: full and pain free extension, flexion decreased by 20% but pain free”, “progress is excellent”. Based on the PT final evaluation, the CI was found to be fit for duty. On 29 Jul 05, the CI was unable to pass his PFT due to left knee pain. The CI had a magnetic resonance imaging (MRI) of the left knee on 12 Oct 05, which showed a tear of the anterior cruciate ligament and a tear of the medial and lateral meniscus along with tricompartmental osteoarthritis. The CI was seen by Orthopedics and they found the knee to be stable, full ROM, medial and lateral joint crepitus with some tenderness. The CI then underwent an arthroscopic partial medial and lateral meniscectomies and patellar shaving (21 Apr 06). He was referred back to PT for reevaluation and continued therapy along with a custom Osteoarthritis (OA) Defiance brace for the left knee. The CI was seen on 26 Sep 06 for complaints of chronic pain in the left knee increased by physical activity, where he described a feeling of left knee stiffness and pain after sitting for 20-30 minutes. The CI was sent for an evaluation on 3 Oct 06 in which the NARSUM examiner noted that the knee had an ROM of -15⁰-120⁰ of flexion, all testing was negative with the exception of a positive Lachman sign and a positive anterior drawer sign. There was no tenderness over the medial or lateral joint line nor was there tenderness over the patellar ligament. Based on the examination results, the examiner opined that the CI had Bicompartmental osteoarthritis of the left knee secondary to the ACL damage for the date of injury in 1989, failed ACL reconstruction in the left knee and accompanying anterolateral rotator instability as well. He concluded that because of the osteoarthritis degeneration of the left knee joint, it appeared that the CI was unable to perform his PFT for the Marine Corps reserve with adequate run times. The CI underwent a VA Compensation and Pension (C&P) exam on 30 Mar 07 which noted that while the CI complains of pain, weakness, stiffness, swelling, instability, and wears a DonJoy (OA) Defiance brace at all times, he does not take any medications, has no walking limitations and had worked as a private investigator. Findings on the exam showed that with three repetitions of ROM, there was no limitation by pain, fatigue, weakness or lack of endurance. The CI also had a normal gait.

Bicompartmental Osteoarthritis of the Left Knee. The PEB rated the CI’s “Bicompartmental Osteoarthritis of the Left Knee” was coded analogously to arthritis (5299-5003) at 10%. The NARSUM approximately two months, 12 days pre-separation (3 Oct 06), noted the symptoms were consistent with osteoarthritis. The CI experienced pain, weakness, swelling, locking and stiffness and fatigability. As a result he was forced to give up sports. He also wore a DonJoy OA Defiance knee brace. The examiner noted a positive Lachman sign and positive pivot shift sign on the left knee. His anterior drawer sign was also positive with an endpoint. Posterior drawer sign was negative. The CI was stable to varus and valgus thrust at -15 and 30 degrees of flexion. There was no medial or lateral joint line tenderness and negative McMurray signs. The patellar grind and compression signs, and apprehension signs showed to be negative. The knee flexion was measured at -15 to 120 degrees. There was no tenderness over the patellar ligament. Sensation showed to be intact to the left lower extremity and all motor groups functioned at 5/5. A weight bearing Anterior-Posterior (AP) x-ray of both knees showed, in the left knee, moderate osteoarthritis of the knee with pointing of the medial border of the proximal tibia and squaring off of the medial femoral condyle on the left knee. An MRI of the left knee showed his ACL has ceased function and is not present on the study and he also has his osteoarthritis in the medial compartment and at the patellofemoral compartment of the knee. The examiner diagnosed the CI with bicompartmental osteoarthritis of the left knee secondary to his ACL damage from his initial injury. The CI also noted his failed ACL reconstruction and anterolateral rotary instability. Both the examiner and the Commander opined the CI’s condition prohibited him to continue with his career. The VA C&P examination, approximately three months 15 days post separation (30 Mar 07), noted the CI was pain free with range of motion measured at 0-115 degrees. There was no limitation of pain, fatigue, weakness or lack of endurance. The examiner’s conclusion was internal derangement for the left knee associated with degenerative joint disease. The VA and PEB chose different coding options for the Bicompartmental Osteoarthritis of the Left Knee which did not materially impact the level of disability rating. The CI contends he was not able to get a job in his line of work: law enforcement, security, private investigation. However, limitations were not noted in his examination summaries. After due deliberation, there is not reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB for the Bicompartmental Osteoarthritis of the Left Knee condition. A 10 percent evaluation is assigned for x-ray evidence of arthritis with painful or limited motion.

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| Knee |  |
| Goniometric ROM | PT 20040820 | PT - 20041030 | MEB - 20061003 | VA C&P - 20070330 |
| Flexion 0-140⁰ normal |  | Decreased by 20⁰ | 120⁰ | 115⁰ |
| Extension 0⁰ normal |  |  | -15⁰ | 0⁰ |
| §4.71a Rating for ROM |  | #% | 10% | 10% |
| Comments | straight→80⁰bent →180⁰McMurrays mildly to pain on both medial and lateral meniscus | Full ROM, pain free flexion and extension No pain with palpation | No tenderness over patellar ligamentPositive Lachman sign, positive pivot sign, anterior drawer sign positive with an end point | No pain on motion three repetitions ROM not limited by pain, fatigue, weakness or lack of endurance extension with laxity 0f 10⁰ in either direction. |
| §4.71a Rating for Instability  |  |  | 10% | 10% |

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| --- | --- | --- | --- | --- |
|  | PT 19891212 | PT 19900223 | PT19900402 | PT – 19900726 |
| Flexion 0⁰-140⁰ normal | AROM-12⁰-118⁰Passive 8⁰-118⁰ | AROM0⁰-130⁰Flexion 0⁰-30⁰ | AROM0⁰-130⁰ | 0⁰-135⁰ |
| Extension 0⁰ normal |  |  |  | #⁰ |
| §4.71a Rating |  |  |  | #% |
| Comments | Slight pain with patellar neck | no swelling | No knee pain, no giving outCrepitus | Feels static stretch is improving |

Left Knee Instability with Accompanying Anterolateral Rotatory Instability. The PEB found the “Accompanying Anterolateral Rotatory Instability” condition as a Category II condition (“Conditions that contribute to the unfitting condition”). However, the NARSUM examiner noted that the CI had a positive Lachman sign as well as a positive pivotal shift sign. On the VA C&P examination, (30 Mar 07) it is documented that the CI complained of instability, locking, fatigability, lack of endurance necessitating the need to wear a DonJoy Defiance brace at all times. On physical examination, it is documented that the CI had laxity to 10 degrees in either direction with extension of the left knee. Regarding the left knee instability, the VA rated this condition (Internal Derangement of Left Knee with Laxity) as 5257 [Veterans Administration Schedule for Rating Disabilities (VASRD) Knee, other impairment of] rated at 10%. The Board closely examined the record of orthopedic consultations and PT examinations and determined that there was sufficient evidence to indicate that there was laxity in the left knee to a mild degree in the lateral plane of motion.

Failed ACL (Anterior Cruciate Ligament) Reconstruction in the Left Knee. The PEB found the “Failed ACL (Anterior Cruciate Ligament) Reconstruction in the Left Knee” condition as a Category II condition (“Conditions that contribute to the unfitting condition”). The NARSUM examination reviewed the left knee MRI eight years after surgery for the ACL repair and concluded that the ACL had ceased function and was not present on the study. The functional limitations secondary to instability are considered unfitting as described above in the discussion of Accompanying Anterolateral Rotatory Instability. The Board closely examined the record and determined that there was sufficient evidence to indicate that there was laxity in the left knee to a mild degree in the anterior-posterior plane of motion.

A disability rating is applied for the functional limitations due to instability, not the specific cause of the instability. Therefore, applying two separate ratings for separate conditions that both caused the instability would be considered pyramiding and is not appropriate. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the CI’s left knee instability favors its recommendation as an additionally unfitting condition. Both subluxation and lateral instability are present and the CI required use of a brace. Each condition alone would be considered mild instability. However with instability in two separate planes of motion, the instability should be considered moderate. It is appropriately rated as 5257 and meets the VASRD § 4.71a criteria for a disability rating of 20%.

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 most appropriately rated at a combined 30% disability rating with 10% for 5299-5003 Bicompartmental Osteoarthritis and 20% for Instability due to Accompanying Anterolateral Rotatory Instability and Failed ACL Reconstruction. Radiographic evidence of arthritis with painful or limited motion in the left knee warrants a 10% rating for Osteoarthritis. Moderate recurrent subluxation and lateral instability in the left knee warrants a 20% rating for Instability. Applying both ratings to the same knee is consistent with the DeLuca criteria in use by the VA at the time of separation. The single voter for dissent did not elect to submit a minority opinion.

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 the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bicompartmental Osteoarthritis of the Left Knee | 5299-5003 | 10% |
| Left Knee Moderate Instability due to Accompanying Anterolateral Rotatory Instability and Failed ACL Reconstruction | 5257 | 20% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 200061215, 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 XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 1 Mar 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 30 percent (increased from 10 percent) with transfer to the Permanent Disability Retired List effective 15 December 2006.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)